OFFICE OF STATE ADMINISTRATIVE HEARINGS
230 Peachtree Street, N.W., Suite 850
Atlanta, Georgia 30303
Tel: (404) 657-2800

MEMORANDUM

To: All Interested Persons and Parties
From: Chief State Administrative Law Judge, Georgia Office of State Administrative Hearings
Date: August 27, 2010
Re: Amendments to the Rules of the Office of State Administrative Hearings

Pursuant to the Georgia Administrative Procedure Act ("APA"), O.C.G.A. § 50-13-4, enclosed is the Notice of Proposed Rulemaking, and Synopsis of Proposed Amendments and Repeal to Various Provisions for proposed amendments to various Rules governing the organization and administrative rules of procedure for the Office of State Administrative Hearings.

The proposed amendments seek to clarify ambiguities in and grammar of the language used in the current Rules, and to eliminate rule inconsistencies. Amendments are proposed for all current Rules except Ga. Comp. R. & Regs. 616-1-2-.37. Notably, Ga. Comp. R. & Regs. 616-1-2-.34 and 616-1-2-.38 are proposed to be repealed. No new rules are proposed. An exact copy of the proposed rules and a synopsis of the proposed rules are attached.

Any party wishing to express opinions or views on the proposed amendments may do so no later than September 27, 2010 by contacting or writing:

Office of State Administrative Hearings
230 Peachtree Street, N.W., Suite 850
Atlanta, GA 30303

For further information, contact (404) 657-2820.

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

NOTICE OF PROPOSED AMENDMENTS AND REPEAL
TO VARIOUS PROVISIONS OF

Ga. Comp. R. & Regs. 616-1-1, -2.

August 27, 2010

To All Interested Persons and Parties:

Pursuant to O.C.G.A. § 50-13-4, **NOTICE IS HEREBY GIVEN** that the Chief State Administrative Law Judge of the Office of State Administrative Hearings proposes to amend and repeal ("amendments") provisions of the Rules and Regulations of the State of Georgia governing the Office of State Administrative Hearings. See O.C.G.A. § 50-13-40(c) ("The chief state administrative law judge shall promulgate rules and regulations and establish procedures to carry out the provisions of [the Office of State Administrative Hearings]."); see also Ga. Comp. R. & Regs. 616-1-1, -2. An exact copy of the proposed rules and a synopsis of the proposed rules are available at the Office of State Administrative Hearings website, www.osah.ga.gov, or may be obtained by contacting the Office of State Administrative Hearings at (404) 657-2820. Also available is a version of the rules indicating the differences between the current rules and the proposed rules.

The proposed amendments seek to clarify ambiguities in and grammar of the language used in the current Rules, and to eliminate rule inconsistencies. Amendments are proposed for all Rules except Ga. Comp. R. & Regs. 616-1-2-.37. Notably, Ga. Comp. R. & Regs. 616-1-2-.34 and 616-1-2-.38 are proposed to be repealed. No new rules are proposed. The proposed amendments will affect the following Rules:

Chapter 01

616-1-1-.01	Organization
616-1-1-.02	Method of Obtaining Information From, Making Submissions to or Requests of the Office
616-1-1-.03	Procedures to Petition for the Adoption of Rules
616-1-1-.04	Procedures for Declaratory Rulings
616-1-1-.05	Mandatory Continuing Judicial Education
616-1-1-.06	Code of Judicial Conduct
616-1-1-.07	Oath of Office

Chapter 02

616-1-2-.01:	Definitions
616-1-2-.02:	Applicability and Scope of These Rules
616-1-2-.03:	Referral of Cases to OSAH
616-1-2-.04:	Filing and Submission of Documents
616-1-2-.05:	Computation of Time
616-1-2-.06:	Changes of Time
616-1-2-.07:	Burden of Proof
616-1-2-.08:	Amendments to Pleadings
616-1-2-.09:	Notice of Hearing
616-1-2-.10:	*Ex Parte* Communications

616-1-2-.11: Service
616-1-2-.12: Consolidation and Severance
616-1-2-.13: Substitution of Parties; Intervention;
616-1-2-.14: Prehearing Conferences
616-1-2-.15: Summary Determination
616-1-2-.16: Motions
616-1-2-.17: Withdrawal of Request for Hearing or Settlement
616-1-2-.18: Evidence; Official Notice
616-1-2-.19: Subpoenas and Notices to Produce
616-1-2-.20: Depositions and Written Questions to Secure Testimony
616-1-2-.21: Nature of Proceedings
616-1-2-.22: Hearing Procedure
616-1-2-.23: Record of Hearings
616-1-2-.24: Proposed Findings of Fact, Conclusions of Law and Briefs
616-1-2-.25: Newly Discovered Evidence
616-1-2-.26: Closure of Hearing Record
616-1-2-.27: Initial or Final Decision
616-1-2-.28: Motions for Reconsideration or Rehearing; Stay of Initial or Final Decision
616-1-2-.29: Remands
616-1-2-.30: Default
616-1-2-.31: Emergency and Expedited Proceedings
616-1-2-.32: Recusal of ALJ
616-1-2-.33: Transfer of the Record to the Referring Agency
616-1-2-.34: Appearance by Attorneys; Signing of Pleadings
616-1-2-.35: Involuntary Dismissal
616-1-2-.36: Alternative Dispute Resolution Program
616-1-2-.38: Discovery
616-1-2-.39: Petitions for Judicial Review
616-1-2-.40: Petitions for Civil Penalties in Department of Natural Resources' Matters
616-1-2-.41: Continuances and Conflicts
616-1-2-.42: Withdrawals and Leaves of Absence
616-1-2-.43: Electronic and Photographic News Coverage of Administrative Proceedings

Adoption of the proposed amendments shall be considered at a public hearing on September 27, 2010 at 10:00 a.m. at the Office of State Administrative Hearings, 230 Peachtree Street, N.W., Suite 850, Atlanta, Georgia 30303, pursuant to the authority contained in O.C.G.A. §§ 50-13-4 and 50-13-40(c). Any interested individual may present comments at the public hearing, submit comments in writing until the date of the public hearing, or participate in both manners indicated. Oral statements should be concise to permit all interested individuals an opportunity to be heard. Written comments must be submitted to the Office of State Administrative Hearings before close of business on the date of the public hearing, September 27, 2010, and may be submitted as follows:

Mail: Office of State Administrative Hearings
230 Peachtree Street, N.W., Suite 850
Atlanta, GA 30303
E-mail: alexiaem@osah.ga.gov
Fax: (404) 818-3730

For further information, call (404) 657-2820.

[PROPOSED NEW]
RULES OF
OFFICE OF STATE ADMINISTRATIVE HEARINGS

CHAPTER 616-1-1

"ORGANIZATION OF THE OFFICE OF STATE ADMINISTRATIVE HEARINGS"

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Cite as Ga. Comp. R. & Regs. 616-1-1-.XX.

01 Organization

(1) The Office of State Administrative Hearings is empowered by statute to adjudicate contested cases on behalf of state agencies. The state agencies that are required to refer contested cases to the Office of State Administrative Hearings for resolution are listed in O.C.G.A. § 50-13-2(1), (42). Other state agencies may contract with the Office of State Administrative Hearings for adjudication services.

(2) The Office of State Administrative Hearings is administered by the Chief State Administrative Law Judge. The Chief State Administrative Law Judge is appointed by the Governor for a term of six (6) years and may be removed by the Governor for cause. The Chief State Administrative Law Judge is authorized to appoint all Office of State Administrative Hearings personnel and to promulgate rules and regulations governing the operations and hearing procedures of the Office of State Administrative Hearings.

(3) Other staff in the Chief State Administrative Law Judge's office include:

(a) A Deputy Chief Administrative Law Judge who assists the Chief State Administrative Law Judge in managing the Office of State Administrative Hearings;

(b) An Administrative Assistant to the Chief State Administrative Law Judge who is responsible for providing information to and receiving submissions from the public as described in Rule 02;

(c) A Chief Clerk who is responsible for receiving and filing all submissions authorized or required to be filed with the Office of State Administrative Hearings.

02 Requesting Information From or Making Submissions to the Office of State Administrative Hearings

(1) General information concerning the Office of State Administrative Hearings' operations may be obtained from the Administrative Assistant to the Chief State Administrative Law Judge.

(2) Requests for information or submissions concerning public participation in rulemaking pursuant to Rule 03 may be directed to the Administrative Assistant to the Chief State Administrative Law Judge.

03 Rulemaking Procedures

To petition for the promulgation, amendment, or repeal of a rule, three (3) copies of a written petition shall be submitted to the Chief State Adminisrative Law Judge. The petition shall state fully the rule involved, the reason for the desired change, the parties that will or can be affected by the petitioned change, and any additional facts known to the petitioner that might influence the decision of the Chief State Administrative Law Judge regarding the initiation of rulemaking.

04 Declaratory Rulings

A declaratory ruling must affect a specific fact situation and specific parties, including the person requesting the ruling. The Chief State Administrative Law Judge shall not issue a declaratory ruling on an issue in a matter pending before an Office of State Administrative Hearings Administrative Law Judge or on a hypothetical fact situation.

To petition for a declaratory ruling as to the applicability of a statute or rule, a petitioner shall submit three (3) copies of the written petition to the Chief State Administrative Law Judge. The petition shall state all of

the facts, including the names of those parties involved in the fact situation, and shall include a statement of the legal issue to be resolved.

If the parties involved in the fact situation include persons in addition to the person requesting the ruling, the person requesting the ruling shall serve a copy of the petition upon such additional persons by personal delivery or first class mail, and shall attach to the petition a certificate or acknowledgment of service. Any person may seek to participate in a declaratory ruling proceeding in the manner and under the standards provided by O.C.G.A. § 50-13-14.

05 Continuing Judicial Education

(1) The minimum continuing judicial education requirement for an Administrative Law Judge is as follows:

(a) An Administrative Law Judge shall obtain twelve (12) hours of credit annually for instruction from an approved continuing judicial or legal education program.

(b) An Administrative Law Judge who earns more than twelve (12) hours of credit in a year may, with express approval of the Chief State Administrative Law Judge, apply the excess credit to the requirement for the succeeding year.

(c) Of the twelve (12) hours of credit obtained each year, at least one (1) hour of credit shall relate to the Code of Judicial Conduct.

(d) The Chief State Administrative Law Judge may exempt an Administrative Law Judge from the continuing judicial education requirement upon a finding of undue hardship. To obtain an exemption, an Administrative Law Judge shall file a request for exemption with the Chief State Administrative Law Judge no later than the first day of December for the year the exemption is sought.

(2) An Administrative Law Judge may receive credit by participating in Continuing Judicial Education programs of the Office of State Administrative Hearings. An Administrative Law Judge who seeks credit for attending programs listed in subparagraphs (a) through (e) shall provide to the Chief State Administrative Law Judge in advance of attendance a description of the program for which credit is sought. An Administrative Law Judge may receive credit by participating in one or more of the following:

(a) programs sponsored by the Institute of Continuing Legal Education accredited by the State Bar of Georgia's Commission on Continuing Lawyer Competency;

(b) programs sponsored by the Institute of Continuing Judicial Education;

(c) courses sponsored by the National Judicial College or any American Bar Association accredited law school, whether for credit or not;

(d) programs sponsored by the National Association of the Administrative Law Judiciary and its affiliates; and

(e) other education programs approved in advance of attendance by the Chief State Administrative Law Judge.

(3) An Administrative Law Judge shall receive one (1) hour of credit for each hour of attendance in a program listed in paragraph (2), three (3) hours of credit for each hour of teaching in such a

program, six (6) hours of credit for each hour of instruction when a handout is prepared and distributed, and two (2) hours of credit for each hour as a panelist.

(4) An Administrative Law Judge shall file a compliance report with the Chief State Administrative Law Judge no later than the end of the second week in December of the year for which the report is submitted.

06 Code of Judicial Conduct

Each Office of State Administrative Hearings Administrative Law Judge is subject to the Georgia Code of Judicial Conduct.

07 Oath of Office

Each Office of State Administrative Hearings Administrative Law Judge shall take the oath prescribed for judges of the Georgia superior courts, along with all other oaths required for civil officers.

[PROPOSED NEW]
RULES OF
OFFICE OF STATE ADMINISTRATIVE HEARINGS

CHAPTER 616-1-2

"ADMINISTRATIVE RULES OF PROCEDURE"

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Rule 43 News Coverage of Hearings

Cite as Ga. Comp. R. & Regs. 616-1-2-.XX.

01 DEFINITIONS

As used in this Chapter, the term:

(a) "Administrative Law Judge" means an administrative law judge or other person appointed by the Chief State Administrative Law Judge, and includes any other person appointed to preside over a hearing.

(b) "APA" means the Georgia Administrative Procedure Act, O.C.G.A. Title 50, Chapter 13.

(c) "Clerk" means the Chief Clerk.

(d) "Contested Case" means a case initiated by a hearing request to a state agency by an aggrieved party.

(e) "Covered Agency" means an agency required to refer contested cases to the Office of State Administrative Hearings.

(f) "CPA" means the Civil Practice Act, O.C.G.A. Title 9, Chapter 11.

(g) "Final Decision" means a decision entered by an Administrative Law Judge that is not reviewable by the Referring Agency.

(h) "Initial Decision" means a decision entered by an Administrative Law Judge that is reviewable by the Referring Agency.

(i) "Person" means any individual, agency, partnership, firm, corporation, association, or other entity.

(j) "Referring Agency" means the state agency for which an administrative hearing is being held.

(k) "State Legal Holidays" means those days on which state offices and facilities are closed by order of the Governor pursuant to O.C.G.A. § 1-4-1(a)–(b).

02 APPLICABILITY AND SCOPE OF RULES

(1) This Chapter governs all contested cases referred to the Office of State Administrative Hearings.

(2) At an Administrative Law Judge's discretion, procedural requirements of these Rules may be relaxed to facilitate the resolution of a matter without prejudice to the parties and in a manner consistent with the requirements of the APA or other applicable law.

(3) Procedural questions that are not addressed by the APA, other applicable law, or these Rules shall be resolved at the Administrative Law Judge's discretion, as justice requires. The Administrative Law Judge may refer to the CPA and the Uniform Rules for the Superior Courts in the exercise of this discretion.

(4) An Administrative Law Judge shall determine which law governs a hearing when a Rule conflicts with or is supplemented by a state or federal statute or rule.

03 REFERRING CASES

Unless otherwise provided by the Chief State Administrative Law Judge, all case referrals to the Office of State Administrative Hearings shall be made by a Referring Agency with an Office of State Administrative Hearings Form 1. (See Attachment A.) The Chief State Administrative Law Judge may prescribe different forms for different Referring Agencies or for different types or classes of cases. The Chief State Administrative Law Judge may authorize the referral of multiple cases through alternative methods.

04 FILING AND SUBMITTING DOCUMENTS

(1) All case-related documents shall be filed on 8 1⁄2 inch x 11-inch paper. A document is deemed filed on the date it is received by the Clerk, or on the official postmarked date on which the document was mailed, properly addressed with postage prepaid, whichever date comes first. The Clerk's office hours shall be 8:00 a.m. to 4:30 p.m., Monday through Friday, except State legal holidays. Documents may be filed by fax or by e-mail attachment.

(2) Case-initiating documents shall be filed with the Clerk. Documents filed subsequent to case initiation shall be filed with the assigned Administrative Law Judge.

(3) All documents shall be signed by the person, attorney, or other authorized agent or representative filing the documents, and shall include the name, address, telephone number, e-mail address, and representative capacity of the person filing the documents. By signing the document, the signer certifies that he or she has read the documents, and is not filing the documents for any improper purpose.

(4) All legal authority referenced in any document and not already a part of the record shall be included in full and may not be incorporated by reference. This requirement does not apply to published decisions of the Georgia appellate courts, the Official Code of Georgia Annotated, Georgia laws, rules, and regulations published by the Secretary of State of Georgia, and all federal statutes, regulations, and published decisions.

(5) Failure to comply with this Rule or any other requirement of this Chapter relating to the form or content of submissions to be filed may result in the noncomplying submission being excluded from consideration. If, on a party's motion or on the Administrative Law Judge's own motion, the Administrative Law Judge determines that a submission fails to meet any requirement of this Chapter, the Administrative Law Judge may direct the Clerk to return the submission by mail together with a reference to the applicable Rule(s). A party whose submission has been returned shall have ten (10) days from the date of the submission's return within which to conform the submission, and to re-file.

05 COMPUTING TIME

(1) Any period of time set forth in these Rules shall begin on the first day following the day of the act that initiates the time period. When the last day of the time period is a day on which the Clerk's office is closed, the time period shall run until the end of the next business day.

(2) Whenever a party has a right or requirement to act or respond to service of notice or other document by another party within a period prescribed by these Rules and not otherwise specified by law, three (3) days shall be added to that prescribed period if the notice or document is served by first class mail.

06 CHANGES OF TIME

For good cause shown, an Administrative Law Judge may change, either on an Administrative Law Judge's own motion or on a party's motion, any time limit prescribed or allowed by these Rules that is not otherwise specified by law. The Administrative Law Judge shall notify all parties of any determination to change a time period.

07 BURDEN OF PROOF

(1) The agency shall bear the burden of proof in all matters except that:

(a) In any case involving the imposition of civil penalties, an administrative enforcement order, or the revocation, suspension, amendment, or non-renewal of a license, the holder of the license and the person from whom civil penalties are sought or against whom an order is issued shall bear the burden as to any affirmative defenses raised;

(b) A party challenging the issuance, revocation, suspension, amendment, or non-renewal of a license who is not the licensee shall bear the burden;

(c) An applicant for a license that has been denied shall bear the burden.

(d) Any licensee that appeals the conditions, requirements, or restrictions placed on a license shall bear the burden; and

(e) An applicant or recipient of a public assistance benefit shall bear the burden unless the case involves an agency action reducing, suspending, or terminating a benefit.

(2) Prior to the commencement of the hearing, the Administrative Law Judge may determine that law or justice requires a different placement of the burden of proof.

08 PLEADINGS; AMENDMENTS TO PLEADINGS

A statute, rule, or order of an Administrative Law Judge may require a party to file a pleading.

A party may amend a pleading without leave of the Administrative Law Judge until the tenth day prior to the date set for hearing on the matter, unless otherwise ordered by the Administrative Law Judge. Thereafter, a party may amend a pleading only by written consent of the opposing party or by leave of the Administrative Law Judge for good cause shown. If a party amends a pleading to which the opposing party is required to respond or reply, a response or reply to the amendment shall be filed within seven (7) days of service of the amendment unless otherwise ordered by the Administrative Law Judge.

09 NOTICE OF HEARING

As soon as practicable after a case is referred to the Office of State Administrative Hearings, the Administrative Law Judge shall issue a Notice of Hearing for the purpose of setting forth the date, time, and place of the hearing. The Notice of Hearing shall be sent to the parties.

10 EX PARTE COMMUNICATIONS

(1) Once a case has been referred to the Office of State Administrative Hearings, no person shall communicate with the assigned Administrative Law Judge relating to the merits of the case

without the knowledge and consent of all other parties to the matter, provided that:

(a) An Administrative Law Judge may communicate with another Administrative Law Judge relating to the merits of cases at any time.

(b) Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits provided that:

(i) The Administrative Law Judge reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication; and

(ii) The Administrative Law Judge makes provision to promptly notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(2) Should an Administrative Law Judge receive a communication prohibited by this Rule, the Administrative Law Judge shall notify all parties of the receipt of such communication and its content.

11 SERVICE

(1) A party filing a document or other submission with the Office of State Administrative Hearings shall simultaneously serve a copy of the document or submission on each party of record. Service shall be by first class mail, fax, e-mail, or personal delivery. Service by mail shall be complete upon mailing by first class mail, with proper postage attached.

(2) Service of a subpoena shall be made pursuant to Rule 19.

(3) Every filing shall be accompanied either by an acknowledgment of service from the person served, by his or her authorized agent for service, or by a certificate of service stating the date, place, and manner of service, as well as the name and address of the persons served.

(4) The Clerk shall maintain and, upon request, furnish to parties of record a list containing the name, address, and telephone number of each party's attorney, or each party's duly authorized representative.

12 CONSOLIDATION; SEVERANCE

(1) In cases involving common issues of law or fact, an Administrative Law Judge may order a joint hearing to expedite or simplify consideration of any or all of the issues in such cases.

(2) If an Administrative Law Judge determines that it would be more conducive to an expeditious, full, and fair hearing for any party or issue to be heard separately, the Administrative Law Judge may sever the party or issue for a separate hearing.

13 SUBSTITUTION OF PARTIES; INTERVENTION; JOINDER

(1) An Administrative Law Judge may, upon motion, permit the substitution of a party as justice requires.

(2) (a) A person seeking to intervene shall file a motion in accordance with Rule 16 stating the

specific grounds for intervention and attach a pleading setting forth the claim or defense for intervention. The grant or denial of the motion to intervene shall be governed by the APA.

(b) To avoid undue delay or prejudice to the original parties, an Administrative Law Judge may limit the factual or legal issues that may be raised by an intervenor.

(3) An Administrative Law Judge is not authorized to join a party to any proceeding without the party's consent.

14 PREHEARING CONFERENCES

(1) An Administrative Law Judge may order the parties to appear at a specified time and place for one or more conferences before or during a hearing. At the discretion of the Administrative Law Judge, prehearing conferences may be conducted in whole or in part by telephone.

(2) The Administrative Law Judge may require a party to submit written proposals regarding:

(a) a schedule for prehearing procedures, including the submission and disposition of all prehearing motions;

(b) simplification, clarification, amplification, or limitation of the issues;

(c) evidentiary matters, such as:

(i) identification of documents expected to be tendered by a party;

(ii) admissions and stipulations of facts and the genuineness and admissibility of documents;

(iii) identification of persons expected to be called as witnesses by a party and the substance of the anticipated testimony;

(iv) identification of expert witnesses expected to be called by a party to testify and the substance of the facts and opinions to which the expert witness is expected to testify and a summary of the grounds for each opinion;

(v) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits or other submissions proposed by any party;

(d) matters for which official notice is sought; and

(e) other matters that may expedite hearing procedures or that the Administrative Law Judge otherwise deems appropriate.

15 SUMMARY JUDGMENT

(1) A party may move, based on supporting affidavits or other probative evidence, for summary judgment in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. There shall be included in the motion or attached thereto a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Such a motion must be filed and served on

all parties no later than thirty (30) days before the date set for hearing. For good cause shown, a motion may be filed at any time before the close of the hearing.

(2) A party may file and serve a response to a motion for summary judgment or a counter-motion for summary judgment within twenty (20) days of service of the motion for summary judgment. The response shall include a short and concise statement of each of the material facts as to which the party opposing summary judgment contends there exists a genuine issue for determination.

(3) When a motion for summary judgment is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

(4) Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents to which reference is made in an affidavit shall be attached thereto and served therewith. Where facts necessary for summary judgment are a matter of expert opinion, such facts may be resolved on the basis of uncontroverted affidavits or testimony of expert opinion.

(5) The Administrative Law Judge may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, and briefs. If the period required to rule upon the motion will extend beyond the date set for the hearing, the Administrative Law Judge may continue the hearing.

(6) The Administrative Law Judge shall rule on a motion for summary judgment in writing.

(7) If all factual issues are decided by summary judgment, the Administrative Law Judge shall issue an Initial or Final Decision.

16 MOTIONS

(1) All requests made to the Administrative Law Judge shall be made by motion. Unless made during the hearing, motions shall be in writing, shall state specifically the grounds therefor, and shall describe the action or order sought. A copy of all written motions shall be served in accordance with Rule 11.

(2) A response to a motion may be filed within ten (10) days after service of the written motion. The time for response may be shortened or extended by the Administrative Law Judge for good cause prior to the expiration of the ten (10) day response period. Either party may request an expedited ruling.

(3) Unless otherwise provided, all motions shall be filed at least ten (10) days prior to the date set for hearing unless the need or opportunity for the motion could not reasonably have been foreseen. Such motions shall be filed as soon as the need or opportunity for the motion becomes reasonably foreseeable.

(4) All motions, and responses thereto, shall include citations of supporting authorities and, if germane, supporting affidavits or citations to evidentiary materials of record.

(5) The Administrative Law Judge may determine whether the nature and complexity of the motion justifies a hearing on the motion and notify the parties accordingly. A request for a hearing on a motion must be made in writing and filed by the date the response to the motion is due. Notice of a hearing on a motion shall be given by the Administrative Law Judge at least five (5) days prior to the date set for hearing. At the discretion of the Administrative Law Judge, a hearing on a

motion may be conducted in whole or in part by telephone. The Administrative Law Judge shall rule upon motions promptly.

(6) Multiple motions may be consolidated for hearing or prehearing conference. The Administrative Law Judge may order the submission of briefs or oral argument relative to any motion.

17 WITHDRAWAL OF HEARING REQUEST; SETTLEMENT

(1) A party requesting a hearing may withdraw the request for hearing at any time, in writing or otherwise, whereupon the Administrative Law Judge shall enter an order of dismissal with prejudice.

(2) The parties may agree to settle the matters in dispute at any time, whereupon the Administrative Law Judge shall enter an order of dismissal with prejudice.

18 EVIDENCE; OBJECTIONS; OFFICIAL NOTICE

(1) As provided in the APA, the Administrative Law Judge shall apply the rules of evidence as applied in the trial of civil non-jury cases when necessary to ascertain facts not reasonably susceptible of proof under such rules. The Administrative Law Judge may consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. At the discretion of the Administrative Law Judge, evidence that may be admitted includes:

(a) Records, reports, statements, plats, maps, charts, surveys, studies, analyses, or data compilations, in any form, of public offices or agencies, setting forth (i) the activities of the office or agency; or (ii) matters observed pursuant to a legal duty to report; or (iii) factual findings resulting from an investigation or research not performed in conjunction with the matter being heard, and carried out pursuant to authority granted by law unless its probative value cannot be determined, or it lacks trustworthiness;

(b) Reports, records, statements, plats, maps, charts, surveys, studies, analyses, or data compilations after testimony by an expert witness that the witness prepared the document and that it is correct to the best of the witness' knowledge, belief, and expert opinion;

(c) Statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of a witness, by other expert testimony, or by official notice to the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination;

(d) Medical, psychiatric, or psychological evaluations or scientific or technical reports, records, statements, plats, maps, charts, surveys, studies, analyses, or data compilations of a type routinely submitted to and relied upon by the Referring Agency in the normal course of its business; and

(e) documentary evidence in the form of copies if the original is not readily available, if its use would unduly disrupt the records of the possessor of the original, or by agreement of the parties. Upon request, parties shall have an opportunity to compare the copy with the original.

(2) Where practicable, a copy of each exhibit identified or tendered at the hearing shall be furnished to the Administrative Law Judge and the other parties when first presented at the hearing.

(3) The Administrative Law Judge shall give effect to statutory presumptions and the rules of privilege recognized by law.

(4) If scientific, technical, or other specialized knowledge may help the Administrative Law Judge understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the reasons therefor without prior disclosure of the underlying facts or data, unless the Administrative Law Judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(5) The Administrative Law Judge may authorize or require the submission of written direct testimony pursuant to Rule 20.

(6) Whenever oral testimony sought to be admitted is excluded by the Administrative Law Judge, the proponent of the testimony may make an offer of proof by means of a brief statement on the record describing the excluded testimony. Whenever documentary or physical evidence or written testimony sought to be admitted is excluded, it shall remain a part of the record as an offer of proof.

(7) All objections shall include a statement of the legal basis for the objection and shall be made promptly or deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(8) In the discretion of the Administrative Law Judge, official notice may be taken of judicially recognizable facts. Any documents officially noticed shall be admitted into the record of the hearing. All parties shall be notified either prior to or during the hearing of the evidence noticed. A party shall on a timely request be afforded an opportunity to contest the matters officially noticed.

19 SUBPOENAS; NOTICES TO PRODUCE

(1) Subpoenas may be issued which require the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings provided for by these Rules. The party on whose behalf the subpoenas are issued shall be responsible for completing and serving the subpoenas sufficiently in advance of the hearing to secure the attendance of a witness or the deposed testimony of the witness at the time of the hearing.

(2) Subpoenas shall be in writing and filed at least five (5) days prior to the hearing or deposition at which a witness or document is sought, shall be served upon all parties, and shall identify the witnesses whose testimony is sought or the documents or objects sought to be produced. Every subpoena shall state the title of the action.

(3) Subpoenas may be obtained from the Office of State Administrative Hearings web site or from the Clerk.

(4) A subpoena may be served at any place within Georgia and by any sheriff, by a sheriff's deputy, or by any other person not less than eighteen (18) years of age. Proof of service may be shown

by certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail, and the return receipt shall constitute prima facie proof of service. Service upon a party may be made by serving the party's counsel of record. Fees and mileage shall be paid to the recipient of a subpoena in accordance with O.C.G.A. § 24-10-24.

(5) Once issued, a subpoena may be quashed by the Administrative Law Judge if it appears that the subpoena is unreasonable or oppressive, or that the testimony, documents, or objects sought are irrelevant, immaterial, or cumulative and unnecessary to a party's preparation and presentation of its position at the hearing, or that basic fairness dictates that the subpoena should not be enforced. The Administrative Law Judge may require the party issuing the subpoena to advance the reasonable cost of producing the documents or objects.

(6) Once issued and served, unless otherwise conditioned or quashed, a subpoena shall remain in effect until the close of the hearing or until the witness is excused, whichever comes first.

(7) A party may serve a notice to produce in order to compel production of documents or objects in the possession, custody, or control of another party in lieu of serving a subpoena under this Rule. Service may be perfected in accordance with paragraph (4), but no fees or mileage shall be allowed therefor. Paragraph (5) shall apply to such notices.

(8) A notice to produce shall be in writing and shall be signed by the party or by the party's attorney who is seeking production of documents or objects. The notice shall be directed to the opposing party or the opposing party's attorney. A copy of any notice to produce shall be filed with the Clerk.

20 DEPOSITIONS; WRITTEN DIRECT TESTIMONY

(1) At any time during the course of a proceeding, the Administrative Law Judge may order that the testimony of a witness is to be taken by deposition or in response to written questions.

(2) The Administrative Law Judge may specify whether the scope of examination by deposition should be limited.

(3) Procedures for oral depositions to secure testimony shall be as follows:

(a) Examination and cross-examination of a deponent shall proceed under the same rules of evidence as are applicable to hearings under this Chapter. Each deponent shall be duly sworn by an officer authorized to administer oaths by the laws of the United States or the place where the examination is held, and the deponent's testimony shall be recorded and transcribed. Any objections made at the time of the deposition to the qualifications of the officer taking the deposition, to the manner in which the deposition was taken, to the evidence presented, to the conduct of any party, or to the proceedings shall be recorded and included in the transcript. Evidence to which there is an objection shall be taken subject to the objection.

(b) Any error or irregularity in the notice of taking testimony by deposition shall be deemed waived unless written objection thereto is filed with the Clerk and served upon all parties prior to the deposition in accordance with Rule 11. Any objection relating to the qualifications of the officer before whom the deposition is to be taken shall be deemed waived unless made before the deposition begins or as soon thereafter as the alleged lack of qualification becomes known or should have been discovered in the exercise of reasonable diligence.

(c) Any objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make an objection before or during the deposition unless the ground of the objection is one which might have been removed if presented at the time. Any error or irregularity occurring during the deposition in the administration of the oath or affirmation, the manner in which the deposition was taken, the form of questions or the answers thereto, the conduct of any party, or any error of a kind which might have been removed or cured if timely raised, shall be deemed waived unless reasonable objection thereto is made at the deposition.

(d) Any error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, certified, transmitted, filed, or otherwise dealt with by the officer taking the deposition shall be deemed waived unless a motion to strike all or a part of the deposition is made with reasonable promptness after such error or irregularity is or should have been ascertained in the exercise of reasonable diligence.

(e) The deposition shall be transcribed, certified, and filed with the Clerk. Any party who contends that the transcript does not truly or fully disclose what transpired at the deposition shall file a notice with the Clerk specifying alleged errors and omissions within ten (10) days of filing the deposition. If the parties are unable to agree as to the alleged errors and omissions, the Administrative Law Judge shall set the matter down for hearing with notice to all parties for the purpose of resolving the differences so as to make the record conform to the truth.

(f) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and attached to and filed with the deposition, and may be inspected and copied by a party. Copies may be substituted for originals if each party is given an opportunity to compare the proffered copy with the original to verify its correctness.

(5) The Administrative Law Judge may order that the direct testimony of a witness be taken in written form. A motion for written direct testimony shall be made and considered in the same manner as prescribed for depositions in paragraphs (1), (2), and (3) of this Rule. Should the Administrative Law Judge order written direct testimony of witnesses, each written question shall be answered separately and fully in writing under oath unless objected to, in which case the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and any objections shall be signed by the attorney making them.

(6) Unless otherwise ordered by the Administrative Law Judge, a party submitting written direct testimony in support of an issue on which it has the burden of proof shall file and serve the written direct testimony upon all parties no less than fifteen (15) days before the hearing. All other testimony shall be filed and served upon all parties no less than five (5) days before the hearing. The admissibility of the evidence contained in written testimony shall be subject to the same rules as if the testimony were produced under oral examination. The witness presenting the statement shall swear to or affirm the statement at the hearing and shall be subject to full cross-examination.

(7) Subject to appropriate rulings on objections, a deposition or written direct testimony shall be received in evidence as if the testimony had been given by the witness before the Administrative Law Judge.

(8) Whenever used in this Rule, the word “witness” shall be construed to include parties.

21 NATURE OF PROCEEDINGS

(1) In a hearing conducted under this Chapter, the Administrative Law Judge shall make an independent determination on the basis of the competent evidence presented at the hearing. Except as provided in Rule 29, the Administrative Law Judge may make any disposition of the matter available to the Referring Agency.

(2) If a party includes in its pleadings a challenge to the regularity of the process by which the Referring Agency reached a decision, the Administrative Law Judge shall take evidence and reach a determination on such a challenge at the outset of the hearing. The party making such a challenge shall have the burden of proof. If the Administrative Law Judge finds the challenge meritorious, the Administrative Law Judge may remand the matter to the Referring Agency.

(3) The hearing shall be de novo in nature and the evidence on the issues in a hearing shall not be limited to the evidence presented to or considered by the Referring Agency prior to its decision.

(4) Unless otherwise provided by federal or state statute or regulation, the standard of proof on all issues in a hearing shall be a preponderance of the evidence.

22 HEARING PROCEDURE

(1) The Administrative Law Judge shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. The Administrative Law Judge may, among other things:

(a) arrange for and issue notices of the date, time, and place of hearings and prehearing conferences;

(b) establish the methods and procedures to be used in the development of the evidence;

(c) hold prehearing conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(d) administer oaths and affirmations;

(e) regulate the course of the hearing and govern the conduct of the participants;

(f) examine witnesses called by the parties;

(g) rule on, admit, exclude, or limit evidence;

(h) establish the time for filing motions, testimony, and other written evidence, exhibits, briefs, proposed findings of fact and conclusions of law, and other submissions;

(i) rule on motions and other procedural matters before the Administrative Law Judge, including but not limited to motions to dismiss for lack of jurisdiction or for summary judgment;

(j) order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;

(k) allow cross-examination as required for a full and true disclosure of facts;

(l) order that any information so entitled under applicable state or federal statute or regulation be treated as confidential information and be accorded the degree of confidentiality required thereby;

(m) reprimand or exclude from the hearing any person for any indecorous or improper conduct;

(n) subpoena and examine witnesses or evidence the Administrative Law Judge believes necessary for a full and complete record; and

(o) take any action not inconsistent with this Chapter or the APA to maintain order at the hearing and for the expeditious, fair, and impartial hearing.

(2) When two or more parties have substantially similar interests and positions, the Administrative Law Judge may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to argue motions and objections on behalf of those parties. Attorneys may engage in cross-examination relevant to matters which the Administrative Law Judge finds have not been adequately covered by previous cross-examination.

(3) Whenever a party asserts that the laws or regulations relevant to the case violate either the Georgia Constitution or United States Constitution, any constitutional provisions such laws or regulations are alleged to violate must be stated with specificity. In addition, an allegation of unconstitutionality must be supported by a statement either of the basis for the claim of unconstitutionality as a matter of law or of the facts under which the party alleges that the law or rule is unconstitutional as applied to the party.

(4) A hearing, or a portion thereof, may be conducted by alternate means if the record reflects that all parties have consented and that the alternate means will not jeopardize the rights of a party to the hearing.

(5) Upon application by a party, the Administrative Law Judge shall certify the facts to the Superior Court of the county in which a party, agent, or employee of a party:

(a) disobeys or resists any lawful order or process;

(b) neglects to produce, after having been ordered to do so, any pertinent book, paper, or document;

(c) refuses to appear after having been subpoenaed;

(d) upon appearing, refuses to take the oath or affirmation as a witness;

(e) after taking the oath or affirmation, refuses to testify; or

(f) disobeys any other order issued by an Administrative Law Judge

for a determination of the appropriate action, including a finding of contempt.

23 RECORD OF HEARINGS

(1) All rulings, orders, and notices issued by the Administrative Law Judge, all pleadings and motions, all recordings or transcripts of oral hearings or arguments, all written direct testimony,

all other data, studies, reports, documentation, information, and other written material of any kind submitted in the proceedings, a statement of matters officially noticed, all proposed findings of fact, conclusions of law, and briefs, as well as the Initial or Final Decision shall be a part of the hearing record and shall be available to the public, except as provided by applicable federal or state law or regulation according confidentiality.

(2) Evidentiary hearings shall be either stenographically reported verbatim or recorded by electronic means. Upon written request, a copy of the record of any oral proceeding shall be furnished to any party at the requesting party's expense.

(3) All documentary and physical evidence shall be retained by the Clerk unless and until the record is transmitted to the Referring Agency pursuant to Rule 33.

24 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; BRIEFS

At the conclusion of the hearing, the Administrative Law Judge may require a party to submit proposed findings of fact, conclusions of law, and briefs on a date certain. Reply briefs may be filed at the Administrative Law Judge's discretion.

25 NEWLY DISCOVERED EVIDENCE

Prior to the entry of an Initial or Final Decision, a party may move the Administrative Law Judge for an order allowing the introduction of additional evidence on the basis that such evidence is newly discovered and was not discoverable in the exercise of reasonable diligence at the time of the hearing. If the Administrative Law Judge determines that the evidence is newly discovered, and that it may materially impact the case, the Administrative Law Judge shall hear and receive such evidence in the manner prescribed for the receipt of evidence by these Rules.

26 CLOSURE OF HEARING RECORD

Except as provided in this Rule or otherwise ordered, the record shall be closed at the conclusion of the evidentiary hearing. Should the Administrative Law Judge request the preparation of a transcript or require or authorize the filing of proposed findings of fact and conclusions of law, or briefs, the record shall be deemed closed upon the receipt of the transcript or upon the expiration of the time allowed for the required or authorized filings, whichever date comes last.

27 INITIAL OR FINAL DECISION

The Administrative Law Judge shall review and evaluate all of the admitted evidence and interlocutory rulings, and shall issue a written Initial or Final Decision, setting forth the findings of fact and conclusions of law. The Initial or Final Decision shall be issued within the time provided by applicable state or federal statute or regulation, or within thirty (30) days of the hearing record closes. Should the Administrative Law Judge determine that the complexity of the issues and the length of the record require additional time to issue the Initial or Final Decision, the Administrative Law Judge shall enter an order setting forth the earliest practicable date certain for the issuance of an Initial or Final Decision.

28 MOTIONS FOR RECONSIDERATION OR REHEARING; STAY OF INITIAL OR FINAL DECISION

(1) A motion for reconsideration or rehearing of an Initial or Final Decision will be considered only if

the motion is filed within ten (10) days of the entry of the Initial or Final Decision. The time for filing such a motion may be extended by the Administrative Law Judge for good cause.

(2) The filing of such a motion shall not operate as a stay of enforcement of the Initial or Final Decision, unless the Administrative Law Judge finds that the public health, safety, and welfare will not be harmed by the issuance of a stay.

(3) The Administrative Law Judge shall not grant a motion for rehearing until after the expiration of the period for a response by any other party provided by Rule 16(2).

29 REMANDS

(1) The Administrative Law Judge may remand a matter to the Referring Agency at any time. The Administrative Law Judge shall consider, among other things, the possible delay created by a remand and its impact upon the parties and the likelihood that a remand could cause a change in the position taken by the Referring Agency whose action is being reviewed.

(2) The Administrative Law Judge shall remand to the Referring Agency a matter contesting the denial of a permit or license in which the Administrative Law Judge concludes that the denial was unlawful. The Administrative Law Judge shall include the findings of fact and conclusions of law required by Rule 27 in a written order of remand.

30 DEFAULT

(1) A default order may be entered against a party that fails to participate in any stage of a proceeding, a party that fails to file any required pleading, or a party that fails to comply with an order issued by the Administrative Law Judge. Any default order shall specify the grounds for the order.

(2) Any default order may provide for a default as to all issues, a default as to specific issues, or other limitations, including limitations on the presentation of evidence and on the defaulting party's continued participation in the proceeding. After issuing a default order, the Administrative Law Judge shall proceed as necessary to resolve the case without the participation of the defaulting party, or with such limited participation as the Administrative Law Judge deems appropriate, and shall determine all issues in the proceeding, including those affecting the party in default.

(3) Within ten (10) days of the entry of a default order, the party against whom the default order was issued may file a written motion requesting that the order be vacated or modified, and stating the grounds for the motion.

(4) The Administrative Law Judge may decline to enter a default or may open a default previously entered if the party's failure was the result of providential cause or excusable neglect, or if the Administrative Law Judge determines from all of the facts that a proper case has been made to deny or open the default.

(5) If a party fails to attend an evidentiary hearing after having been given written notice, the Administrative Law Judge may proceed with the hearing in the absence of the party unless the absent party is the party who requested the hearing, in which case the Administrative Law Judge may dismiss the action. Failure of a party to appear at the time set for hearing shall constitute a failure to appear, unless excused for good cause.

31 EMERGENCY OR EXPEDITED PROCEDURES

Whenever a hearing is required by law to be held pursuant to an expedited time frame inconsistent with these Rules, or whenever the Administrative Law Judge determines that an expedited time frame is necessary to protect the interests of the parties or the public's health, safety, or welfare, the Administrative Law Judge shall require pleadings and shall conduct the hearing in such manner as justice requires.

32 RECUSAL OF AN ADMINISTRATIVE LAW JUDGE

(1) An Administrative Law Judge may be recused, or disqualified from a case, based on bias, prejudice, interest, or any other cause provided for in this Rule.

(2) An Administrative Law Judge shall be recused in any proceeding in which the impartiality of the Administrative Law Judge might reasonably be questioned, including but not limited to instances in which:

(a) The Administrative Law Judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) The Administrative Law Judge served as a lawyer in the matter in controversy, or a lawyer with whom the Administrative Law Judge previously practiced law served during such association as a lawyer concerning the matter, or the Administrative Law Judge has been a material witness concerning the matter; or

(c) The Administrative Law Judge, the spouse of the Administrative Law Judge, a person within the third degree of relationship to either of them, the spouse of such a person, or any other member of the family of the Administrative Law Judge residing in the household is a party to the proceeding or an officer, director, or trustee of a party, is acting as a lawyer or as a party's representative in the proceeding, is known by the Administrative Law Judge to have more than trivial interest that could be substantially affected by the proceeding, or is to the knowledge of the Administrative Law Judge likely to be a material witness in the proceeding.

(3) An Administrative Law Judge shall keep informed about his or her personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal financial interests of the spouse and minor children residing in the household of the Administrative Law Judge.

(4) An Administrative Law Judge who is recused by the terms of this Rule may disclose on the record the basis of disqualification and may ask the parties and their lawyers to consider, out of his or her presence, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties agree that the Administrative Law Judge should not be disqualified, the Administrative Law Judge may preside over the proceeding. The agreement shall be incorporated into the hearing record.

(5) Any party shall move for the disqualification of an Administrative Law Judge promptly after receipt of notice indicating that the Administrative Law Judge will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(6) All motions for recusal shall be made in writing and shall be accompanied by an affidavit setting forth definite and specific allegations that demonstrate the facts upon which the motion for

disqualification is based. A motion for recusal shall be referred to another Administrative Law Judge if the Administrative Law Judge originally assigned to the matter determines that the affidavit is legally sufficient and that, assuming all the allegations of the affidavit are true, recusal would be warranted. If the motion for recusal is referred to another Administrative Law Judge and the motion is determined to be meritorious, the Administrative Law Judge originally assigned to the matter shall be disqualified.

33 TRANSFER OF THE RECORD TO REFERRING AGENCY

Following the entry of an Initial or Final Decision, the Clerk shall compile and certify the hearing record to the Referring Agency.

34 APPEARANCE BY ATTORNEYS; SIGNING OF PLEADINGS

Repealed.

35 INVOLUNTARY DISMISSAL

After a party with the burden of proof has presented its evidence, a party may move for dismissal on the ground that the party that presented its evidence has failed to carry its burden. The Administrative Law Judge may determine the facts and render an Initial or Final Decision against the party that has presented its evidence as to any or all issues. The moving party shall not waive its right to offer evidence in the event the motion is denied. The Administrative Law Judge may decline to render an Initial or Final Decision until after the close of all the evidence.

36 ALTERNATIVE DISPUTE RESOLUTION

The Office of State Administrative Hearings has established an Alternative Dispute Resolution process to provide a speedy, efficient, and inexpensive resolution of disputes. The Uniform Rules for Dispute Resolution Programs adopted by the Georgia Supreme Court that are applicable to contested civil actions shall be followed.

37 REQUEST FOR AGENCY RECORDS

(1) In any matter which could result in the revocation, suspension, or limitation of a license or permit, requests by the licensee or permit holder for exculpatory, favorable, or arguably favorable information relative to any pending issues concerning the license or permit shall be governed by O.C.G.A. § 50-13-18(d).

(2) Requests for access to public records pertaining to the subject of a pending matter shall be governed by O.C.G.A. § 50-18-70(e).

38 DISCOVERY

Repealed.

39 JUDICIAL REVIEW

Pursuant to the APA, a copy of any petition for judicial review of a Final Decision shall be filed with the Office of State Administrative Hearings by the party seeking judicial review simultaneously with the service of the petition upon the Referring Agency. The Referring Agency shall submit the hearing record as compiled and certified by the Clerk to the reviewing court.

40 CIVIL PENALTIES REQUESTED BY THE DEPARTMENT OF NATURAL RESOURCES

(1) Whenever an official within the Department of Natural Resources ("DNR Official") seeks the imposition of civil penalties, the DNR Official shall file a petition for hearing with the Clerk.

(2) A petition for hearing on civil penalties shall contain:

(a) A statement of the legal authority and jurisdiction under which a hearing is requested;

(b) A statement indicating each specific section, subsection, or paragraph, if applicable, of the laws or regulations allegedly violated;

(c) A short and plain statement of the facts asserted as the basis of the alleged violation(s); and

(d) The amount of civil penalty sought to be imposed.

(3) Upon filing the petition, the Clerk shall issue a summons directed to each person or entity from whom civil penalties are sought and deliver the summons to the DNR Official for service. The summons shall be signed by the Clerk, and contain the name of the forum, the name and address of counsel for the DNR Official, and a statement of the requirements of subparagraph (4) below. Each summons shall have a copy of the petition for hearing attached, and shall be served by the DNR Official by certified mail or personal service. A return of service for each summons and petition shall be filed with the Clerk promptly after service.

(4) A response to the petition shall be filed with the Clerk and served upon the DNR official within thirty (30) days of service of the summons and petition. The response shall address all factual allegations set forth in the petition and shall include any affirmative defenses. Any allegations of fact contained in the petition for hearing shall be deemed admitted unless they are specifically denied, or unless it is stated that there is a lack of knowledge or information sufficient to form a belief as to the truth of the allegations.

41 CONTINUANCES; CONFLICTS

(1) (a) A motion for continuance shall only be granted upon a showing of good cause, and shall not be granted simply because the parties or their counsel agree. The Administrative Law Judge may consider among other pertinent factors the impact of a continuance on any parties who do not consent to the motion, the calendar of Administrative Law Judge, the difficulty in rescheduling the hearing site, the need for an expeditious resolution of the matter(s) at issue, and the public's health, safety, and welfare.

(b) A notice of conflict filed shall not be considered as a motion for a continuance unless the notice expressly requests a continuance.

(2) In the event an attorney has a conflict involving an appearance before the Office of State Administrative Hearings and another legal proceeding, the requirements of the Uniform Rules for

the Superior Courts shall be followed.

42 ATTORNEY WITHDRAWALS; LEAVES OF ABSENCE

Attorneys of record shall follow the Uniform Rules for the Superior Courts for withdrawals and leaves of absence.

43 NEWS COVERAGE OF ADMINISTRATIVE PROCEEDINGS

In all administrative hearings open to the public, persons desiring to broadcast, record, or photograph any portion of a proceeding must file a timely written request with the Administrative Law Judge prior to the hearing. The request shall specify the particular proceedings for which such coverage is requested, the type of equipment to be used in the courtroom, and the person responsible for installation and operation of such equipment. The Administrative Law Judge shall resolve such request in the manner prescribed for such a request by the Uniform Rules for the Superior Courts.

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

SYNOPSIS OF PROPOSED AMENDMENTS, ADDITIONS, AND REPEAL TO VARIOUS PROVISIONS OF

Ga. Comp. R. & Regs. 616-1-1 "Organization"

Ga. Comp. R. & Regs. 616-1-2 "Administrative Rules of Procedure"

Statement of Purpose:
These proposed amendments and repeals are promulgated pursuant to the authority contained in O.C.G.A. §§ 50-13-4 and 50-13-40(c). The primary purpose of the proposed amendments and repeals are to clarify ambiguities by correcting grammar and syntax errors in order to eliminate rule inconsistencies, and to conform to administrative practice in Georgia. Specifically, amendments are proposed for all Rules except Ga. Comp. R. & Regs. 616-1-2-.37. Notably, Ga. Comp. R. & Regs. 616-1-2-.34 and 616-1-2-.38 are proposed to be repealed. No new rules are proposed. An exact copy of the proposed rules is attached.

The proposed amendments are corrections to grammar and syntax in the current rules, as well as technical edits. The proposed amendments take technological advancements and administrative practice into consideration for procedural matters. The proposed repeals seek to eliminate rule inconsistencies. The differences between the existing rule and the proposed rule can be found in the attachment, which indicates by "strikethrough" the portions that are proposed to be eliminated and by "underline" the portions that are proposed to be added. The proposed amendments will affect the following Rules:

Chapter 01
616-1-1-.01 Organization
616-1-1-.02 Method of Obtaining Information From, Making Submissions to or Requests of the Office
616-1-1-.03 Procedures to Petition for the Adoption of Rules
616-1-1-.04 Procedures for Declaratory Rulings
616-1-1-.05 Mandatory Continuing Judicial Education
616-1-1-.06 Code of Judicial Conduct
616-1-1-.07 Oath of Office

Chapter 02
616-1-2-.01: Definitions
616-1-2-.02: Applicability and Scope of These Rules
616-1-2-.03: Referral of Cases to OSAH
616-1-2-.04: Filing and Submission of Documents
616-1-2-.05: Computation of Time
616-1-2-.06: Changes of Time
616-1-2-.07: Burden of Proof

CHAPTER 616-1-1
ORGANIZATION OF ~~OSAH~~ THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

TABLE OF CONTENTS

Cite as Ga. Comp. R. & Regs. 616-1-1-.XX.

01 Organization

(1) The Office of State Administrative Hearings ~~(OSAH)~~ is ~~an agency created~~ empowered by statute ~~and empowered~~ to ~~conduct the initial or final hearing in~~ adjudicate contested cases ~~for a number of other~~ on behalf of state agencies. ~~For a determination of those state agencies who are required to utilize OSAH for the conduct of their initial hearings, an examination of O.C.G.A. §§ 50-13-2(1) and 42 is required. Any other state agency is authorized to contract with OSAH for the conduct of initial hearings. In addition, a state agency may provide by statute or rule for OSAH to conduct final hearings on the agency's behalf~~The state agencies that are required to refer contested cases to the Office of State Administrative Hearings for resolution are listed in O.C.G.A. § 50-13-2(1), (42). Other state agencies may contract with the Office of State Administrative Hearings for adjudication services.

(2) ~~OSAH~~The Office of State Administrative Hearings is administered by the Chief State Administrative ~~law~~Law Judge ~~(~~. The Chief ~~ALJ). The Chief ALJ~~State Administrative Law Judge is appointed by the Governor for a term of six (6) years and may be removed by the Governor for cause. The Chief ~~ALJ has the authority~~State Administrative Law Judge is authorized to appoint all ~~OSAH~~Office of State Administrative Hearings personnel~~, to establish procedures for the administration of OSAH,~~ and to promulgate rules and regulations governing the ~~operation of OSAH~~operations and hearing procedures of the ~~conduct~~Office of ~~hearings by OSAH~~State Administrative Hearings.

(3) Other ~~officers~~staff in the Chief ~~ALJ's~~State Administrative Law Judge's office include:

(a) ~~The~~ A Deputy Chief ~~ALJ~~Administrative Law Judge who assists the Chief ~~ALJ is supervising OSAH;~~State Administrative Law Judge in managing the Office of State Administrative Hearings;

(b) ~~The~~An Administrative Assistant to the Chief ~~ALJ~~State Administrative Law Judge who is responsible for providing information to~~,~~ and receiving submissions from~~,~~ the public as described in Rule ~~616-1-1-.~~02;

(c) ~~The OSAH Administrative Hearing~~ A Chief Clerk who is responsible for ~~the receipt~~receiving and filing ~~of~~ all ~~-~~submissions authorized or required to be filed with ~~OSAH or an ALJ~~the Office of State Administrative Hearings.

02 ~~Method of Obtaining~~ Requesting Information From~~,~~ or Making Submissions to ~~or Requests of~~ the Office of State Administrative Hearings

(1) General information concerning ~~OSAH's~~the Office of State Administrative Hearings' operations may be obtained from the Administrative Assistant to the Chief ~~ALJ~~State Administrative Law Judge.

(2) ~~Request~~ Requests for information or submissions concerning public participation in rulemaking ~~by the Chief ALJ~~ pursuant to Rule 03 may be directed to the Administrative Assistant to the Chief ~~ALJ~~State Administrative Law Judge.

03 Rulemaking Procedures ~~to Petition for the Adoption of Rules~~

~~Any person desiring to~~To petition ~~the Chief ALJ requesting~~for the promulgation, amendment, or repeal of a rule ~~shall submit~~, three (3) copies of ~~the petition, in writing, to the Chief ALJ. No special form of~~ a written petition shall be ~~required but the~~ submitted to the Chief State Adminisrative Law Judge. The petition shall state fully the rule involved, the reason for the desired change, ~~any~~ the parties ~~who it is know~~that will or can be affected by the petitioned change, and any additional facts known to the petitioner ~~which~~ that might influence the decision of the Chief ~~ALJ to initiate or not initiate~~ State Administrative Law Judge regarding the initiation of rulemaking.

04 ~~Procedures for~~ Declaratory Rulings

~~Any person wishing to file a~~ A declaratory ruling must affect a specific fact situation and specific parties, including the person requesting the ruling. The Chief State Administrative Law Judge shall not issue a declaratory ruling on an issue in a matter pending before an Office of State Administrative Hearings Administrative Law Judge or on a hypothetical fact situation.

To petition for a declaratory ruling as to the applicability of a statute or rule ~~or order of OSAH~~, a petitioner shall submit three (3) copies of the written petition~~, in writing,~~ to the Chief ~~ALJ.~~State Administrative Law Judge. The petition shall state all of the facts, including the names of those parties involved in the fact situation, and shall include a statement of the legal issue ~~sought~~ to be resolved. ~~The Chief ALJ will not issue a declaratory ruling on an issue in a matter pending before an OSAH ALJ or on a hypothetical fact situation and any ruling requested must affect a specific fact situation and specific parties including the person requesting the ruling.~~

If the parties involved in the fact situation include persons in addition to the person requesting the ruling, the person requesting the ruling shall serve a copy of the petition upon such additional persons by personal delivery or first class mail, and shall attach to the petition a certificate or acknowledgment of service. Any ~~persons, including the additional persons served,~~ person may seek to participate in a declaratory ruling proceeding in the manner and under the standards provided by O.C.G.A. § 50-13-14.

05 ~~Mandatory~~ Continuing Judicial Education

(1) The minimum continuing judicial education requirement for ~~every ALJ~~an Administrative Law Judge is as follows:

(a) ~~Every ALJ~~An Administrative Law Judge shall ~~attend~~ obtain twelve (12) hours of credit annually for instruction ~~in~~from an approved continuing judicial or legal education program ~~during each year beginning January 1, 1997~~.

(b) ~~Any ALJ~~An Administrative Law Judge who earns more than twelve (12) hours of credit in a year ~~beginning January 1, 1997,~~ may, with express approval of the Chief State Administrative Law Judge, apply the excess

credit to the requirement for the succeeding year.

(c) ~~At least 1 hour of the~~ Of the twelve (12~~-~~) hours of credit obtained each year ~~shall be dedicated to the area of judicial or legal professionalism and~~, at least one (1) hour of credit shall ~~be dedicated~~relate to the Code of Judicial Conduct.

(d) The Chief ~~ALJ~~ State Administrative Law Judge may exempt an ~~ALJ~~Administrative Law Judge from the continuing judicial education requirement~~s~~ upon a finding of undue hardship. ~~ALJs who seek~~ To obtain an exemption ~~under this provision~~, an Administrative Law Judge shall file a request for exemption with the Chief ~~ALJ~~State Administrative Law Judge no later than the first day of December for the year the exemption is sought.

(2) ~~ALJs will~~An Administrative Law Judge may receive credit by participating in ~~OSAH's annual~~ Continuing Judicial Education ~~Programs. ALJs~~ programs of the Office of State Administrative Hearings. An Administrative Law Judge who seeks credit for attending programs listed in subparagraphs (a) through (e) shall provide to the Chief State Administrative Law Judge in advance of attendance a description of the program for which credit is sought. An Administrative Law Judge may receive credit by participating in one or more of the following ~~programs~~:

(a) programs sponsored by the Institute of Continuing Legal Education accredited by the State Bar of Georgia's ~~–~~Commission on Continuing Lawyer Competency;

(b) programs sponsored by the Institute of Continuing Judicial Education;

(c) ~~programs approved for the Council of Superior Court Judges, State Court Judges, and Juvenile Court Judges by their Committees on Mandatory Continuing Judicial Education;~~

~~(d)~~ courses ~~at~~sponsored by the National Judicial College or ~~at~~ any ~~ABA~~American Bar Association accredited law school, whether for credit or not; ~~and~~

(d) programs sponsored by the National Association of the Administrative Law Judiciary and its affiliates; and

(e) other education programs ~~if they have secured the prior approval of~~approved in advance of attendance by the Chief ~~ALJ. ALJs who seek credit for attending programs listed in subparagraphs (a) through (e) shall provide to the Chief ALJ a description of each course that they desire to attend.~~ State Administrative Law Judge.

(3) ~~ALJs~~An Administrative Law Judge shall receive one (1) hour of credit for each hour of attendance in a program listed in paragraph (2), three (3) hours of credit for each hour of teaching in such a program, six (6) hours of credit for each hour of instruction when a handout is prepared and distributed, and two (2) hours of credit for each hour as a panelist ~~or mock trial judge~~.

(4) ~~Every ALJ~~An Administrative Law Judge shall file a compliance report with the Chief ~~ALJ~~State Administrative Law Judge no later than the end of the second week in December of the year for which the report is submitted.

06 Code of Judicial Conduct

~~ALJs are~~Each Office of State Administrative Hearings Administrative Law Judge is subject to the Georgia Code of Judicial Conduct.

07 Oath of Office

~~Before entering on the discharge~~Each Office of ~~their duties, ALJs~~State Administrative Hearings Administrative Law Judge shall take the oath prescribed for judges of the Georgia superior courts, along with all other oaths required for civil officers.

~~GEORGIA~~ OFFICE OF STATE ADMINISTRATIVE HEARINGS

CHAPTER 616-1-2
ADMINISTRATIVE RULES OF PROCEDURE

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Cite as Ga. Comp. R. & Regs. 616-1-2-.XX.

01 DEFINITIONS

As used in this Chapter, the term:

(a) "~~ALJ" means an~~ Administrative Law Judge ~~appointed by the Chief State Administrative Law Judge. The term ALJ includes any Assistant ALJ, Special Assistant ALJ, Special Designated Assistant ALJ, Special Lay Assistant ALJ, Associate ALJ, and any~~ " means an administrative law judge or other person appointed by the Chief ~~ALJ~~ State Administrative Law Judge, and includes any other person appointed to preside ~~in~~over a hearing.

(b) "APA" means the Georgia Administrative Procedure Act ~~(~~, O.C.G.A. Title 50, Chapter 13~~)~~.

(c) "~~Chief ALJ" means the Chief State Administrative Law Judge.~~

~~(d)~~ "Clerk" means the ~~OSAH Administrative Hearing~~ Chief Clerk.

(d) "Contested Case" means a case initiated by a hearing request to a state agency by an aggrieved party.

(e) "Covered Agency" means ~~a state~~an agency ~~whose initial hearings are~~ required ~~by law to be performed by OSAH or a state agency which has contracted with OSAH for~~to refer contested cases to the ~~conduct~~Office of ~~hearings~~State Administrative Hearings.

(f) "CPA" means the Civil Practice Act, O.C.G.A. Title 9, Chapter 11.

(g) "Final Decision" means a decision entered by an ~~ALJ in a matter pursuant to Rule 616-1-2-.27~~Administrative Law Judge that is not reviewable by the Referring Agency.

(h) "Initial Decision" means a decision entered by an ~~ALJ in a matter pursuant to Rule Rule 27~~Administrative Law Judge that is reviewable by the Referring Agency.

(i) "~~OSAH" means the Office of State Administrative Hearings.~~

~~(j)~~ "Person" means any individual, agency, partnership, firm, corporation, association, or other entity.

(~~k~~j) "Referring Agency" means the state agency for ~~whom~~ which an administrative hearing is being held.

(~~l~~k) "State Legal Holidays" means those days ~~all~~ on which state offices and facilities are closed by order of the Governor pursuant to O.C.G.A. §§ 1-4-1(a~~) and)~~ (b).

02 APPLICABILITY AND SCOPE OF ~~THESE~~ RULES

(1) ~~The Rules in this Chapter govern all hearings in "contested cases," as that term is defined in the APA, which are conducted before an ALJ.~~ This Chapter governs all contested cases referred to the Office of State Administrative Hearings.

(2) ~~An ALJ shall afford a liberal construction of these rules insofar as they are applied to cases wherein petitioners or respondents are not represented by counsel. Moreover, at the discretion of the ALJ, the~~At an Administrative Law Judge's discretion, procedural requirements of these ~~rules~~ Rules may be relaxed ~~in appropriate cases where such relaxation will~~ to facilitate the resolution of ~~the~~a matter without prejudice to the parties and ~~will not be inconsistent~~in a manner consistent with the requirements of the APA or other applicable ~~statute~~law.

(3) Procedural questions ~~arising at any stage of the proceeding which~~ that are not addressed ~~in~~by the APA, ~~any~~ other applicable law, or these Rules shall be resolved at the Administrative Law

Judge's discretion ~~of the ALJ~~, as justice requires. The ~~ALJ~~Administrative Law Judge may ~~consult and utilize~~refer to the CPA and the Uniform Rules for the Superior Courts in the exercise of this discretion.

(4) ~~In the event any requirement of these Rules~~ An Administrative Law Judge shall determine which law governs a hearing when a Rule conflicts with or is supplemented by ~~an applicable~~ a state ~~statute~~ or federal statute or ~~federal~~ rule ~~governing hearings for a Referring Agency, the requirement of the conflicting or supplementing state statute or federal statute or federal rule shall be applied by the ALJ either on the ALJ's own initiative or on the written notice or motion of any party.~~ .

~~(5) The Rules in this Chapter do not supersede any statutes or rules which regulate any activity which may take place before a hearing is referred to OSAH including how a hearing before a Referring Agency is to be initiated or requested.~~

03 ~~REFERRAL OF~~REFERRING CASES ~~TO OSAH~~

Unless otherwise provided by the Chief ~~ALJ~~State Administrative Law Judge, all case referrals ~~from a Covered Agency for~~ to the ~~conduct~~Office of ~~an administrative hearing by OSAH~~State Administrative Hearings shall be made ~~on OSAH~~by a Referring Agency with an Office of State Administrative Hearings Form 1~~, a copy of which is appended to these Rules as~~. (See Attachment A~~.~~.) The Chief ~~ALJ~~State Administrative Law Judge may prescribe ~~a~~ different ~~form~~forms for different ~~Covered~~ Referring Agencies or for different types or classes of cases ~~and~~. The Chief State Administrative Law Judge may authorize the ~~transmittal~~referral of multiple cases ~~on a single form. In the event a case is referred to OSAH unaccompanied by the form prescribed by this Rule or the Chief ALJ, or is accompanied by a form which is incomplete, the case may be returned to the Covered Agency at the sole discretion of the Chief ALJ~~through alternative methods.

04 FILING AND ~~SUBMISSION OF~~SUBMITTING DOCUMENTS

(1) All ~~submissions authorized or required to be filed with OSAH or an ALJ under this Chapter~~case-related documents shall be filed on 8 1⁄2 ~~by~~inch x 11 ~~-~~inch paper ~~with the Clerk. Submissions shall be~~ . A document is deemed filed on the date ~~on which they are~~ it is received by the Clerk, or on the official ~~postmark~~postmarked date ~~such~~ on which the document was mailed, properly addressed ~~to the Clerk~~ with postage prepaid, whichever date comes first. ~~Submissions may also be filed by facsimile machine or other electronic means.~~

~~(2) The~~The Clerk's office hours ~~of the Clerk~~ shall be 8:~~30~~00 a.m. to 4:30 p.m., Monday through Friday, except State legal holidays. ~~–~~Documents may be filed by fax or by e-mail attachment.

(2) Case-initiating documents shall be filed with the Clerk. Documents filed subsequent to case initiation shall be filed with the assigned Administrative Law Judge.

(3) All ~~submissions~~documents shall be signed by the person ~~making the submission, or by an~~, attorney, or other authorized agent or representative filing the documents, and shall ~~state~~include the name, address, telephone number, e-mail address, and representative capacity of the person ~~making the submission. The signature of an attorney or party shall constitute a certificate that the signer has read the submission and that it is not interposed for delay~~ filing the documents. By signing the document, the signer certifies that he or she has read the documents, and is not filing the documents for any improper purpose.

(4) All legal authority ~~referred to or in any way relied upon in any submission~~referenced in any document and not already a part of the record shall be included in full and may not be incorporated by reference. This requirement does not apply to published decisions of the Georgia appellate courts, the Official Code of Georgia Annotated, Georgia ~~Laws~~laws, rules, and regulations published by the Secretary of State of Georgia, and all federal statutes, regulations, and published decisions.

(5) Failure to comply with this Rule or any other requirement of this Chapter relating to the form or content of submissions to be filed may result in the noncomplying submission being excluded from consideration. If, on a party's motion or on the Administrative Law Judge's own motion ~~by any party or on the ALJ's own motion, the ALJ~~, the Administrative Law Judge determines that a submission fails to meet any requirement of this Chapter, the ~~ALJ~~Administrative Law Judge may direct the Clerk to return the submission by mail together with a reference to the applicable Rule(s). A party whose submission has been returned shall have ten (10) days from the date ~~the submission is mailed back by the Clerk~~of the submission's return within which to conform the submission ~~to the applicable Rule(s) and refile.~~ , and to re-file.

05 ~~COMPUTATION OF~~COMPUTING TIME

(1) ~~Computation of any~~Any period of time ~~referred to~~set forth in these Rules shall begin ~~with~~ on the first day following the day ~~on which~~of the act ~~which~~ that initiates ~~such~~ the time period ~~of time occurs~~. When the last day of the time period ~~so computed~~ is a day on which the Clerk's office ~~of the Clerk~~ is closed, the time period shall run until the end of the ~~following~~next business day.

(2) Whenever a party has ~~the~~a right or ~~is required to do some~~ requirement to act or ~~take some proceedings after the~~ respond to service of notice or other ~~paper, other than process, upon the party~~document by another party within a period prescribed by these Rules and not otherwise specified by law, three (3) days shall be added to that prescribed period if the notice or ~~paper~~document is served by first class mail.

06 CHANGES OF TIME

For good cause shown, an ~~ALJ~~ Administrative Law Judge may change, either on ~~the ALJ's~~an Administrative Law Judge's own motion or on ~~the~~a party's motion ~~of any party~~, any time limit prescribed or allowed by these Rules that is not otherwise specified by law. The ~~ALJ~~Administrative Law Judge shall notify all parties of any determination to change ~~any~~ time ~~limit~~period.

07 BURDEN OF PROOF

(1) The agency ~~party~~ shall bear the burden of proof in all matters except that:

(a) In any case involving the imposition of civil penalties, an administrative enforcement order, or the revocation, suspension, amendment, or non-renewal of a license, the holder of the license and the person from whom civil penalties are sought or against whom an order is issued shall bear the burden as to any affirmative defenses raised ~~by them~~;

(b) A~~ny~~ party challenging the issuance, revocation, suspension, amendment, or non-renewal of a license who is not the licensee shall bear the burden;

(c) An~~y~~ applicant for a license that has been denied shall bear the burden.

(d) Any licensee that appeals the conditions, requirements, or restrictions placed on a license shall bear the burden; and

~~(d)~~ ~~Any potential~~(e) An applicant or ~~actual~~ recipient of a public assistance benefit shall bear the burden unless the case involves an agency action reducing, suspending, or terminating a benefit.

(2) ~~The ALJ may either on the ALJ's own motion or on motion of any party and by notice~~Prior to the ~~parties at least three days prior to~~ commencement of the hearing ~~where practicable but in any event before the start of the hearing~~, the Administrative Law Judge may determine that law or justice requires a different placement of the burden of proof.

08 PLEADINGS; AMENDMENTS TO PLEADINGS

A statute, rule, or order of an Administrative Law Judge may require a party to file a pleading.
~~In the event any pleading is required by an ALJ or Referring Agency statute or rule, any~~
A party may amend ~~such~~ a pleading without leave of the ~~ALJ~~Administrative Law Judge until the tenth day prior to the date set for hearing on the matter ~~or until the entry of a prehearing order pursuant to Rule Rule 14(3), whichever occurs first.~~ , unless otherwise ordered by the Administrative Law Judge. Thereafter, a party may amend ~~his pleadings~~ a pleading only by written consent of the ~~adverse~~opposing party or by leave of the ~~ALJ~~Administrative Law Judge for good cause shown. If ~~an amendment is made to any~~a party amends a pleading to which ~~a response~~the opposing party is required to respond or reply ~~is required~~, a response or reply to ~~such~~ the amendment shall be filed within seven (7) days ~~after~~ of service of the amendment unless otherwise ordered by the ~~ALJ~~Administrative Law Judge.

09 NOTICE OF HEARING

~~1) As soon as practicable after the receipt of a request from a Covered Agency that OSAH conduct a hearing and the filing of any responsive pleading(s), the ALJ shall issue a notice of hearing including:~~

~~(a) the time, place, and nature of the hearing;~~
~~(b) the legal authority and jurisdiction pursuant to which the hearing was requested;~~
~~(c) the specific laws and rules involved;~~
~~(d) a short and plain statement of the matters asserted by the parties;~~
~~(e) the right of parties to subpoena witnesses and documentary evidence, to be represented by legal counsel, and to respond and present evidence on all issues involved; and~~
~~(f) the potential consequences of a failure to attend a hearing as set forth in Rule Rule 30(5).~~

~~2) If the ALJ is unable to state the matters in detail on the basis of the pleadings filed, the notice may be limited to a statement of the issues involved. Thereafter, the ALJ may require more detailed pleadings and, upon the written application of a party, the ALJ shall furnish, or shall require the appropriate party to furnish, a more detailed statement. The notice may incorporate by reference information set forth in the petition, the responsive pleading(s), a prehearing order, or any other material included in the record of the matter at issue.~~

As soon as practicable after a case is referred to the Office of State Administrative Hearings, the Administrative Law Judge shall issue a Notice of Hearing for the purpose of setting forth the date, time, and place of the hearing. The Notice of Hearing shall be sent to the parties.

10 EX PARTE COMMUNICATIONS

(1) ~~Commencing with the filing~~Once a case has been referred to the Office of ~~a request that OSAH conduct a hearing~~State Administrative Hearings, no person shall communicate ~~ex parte with any ALJ~~with the assigned Administrative Law Judge relating to the merits of the ~~proceeding~~case without the knowledge and consent of all other parties to the matter ~~until the matter is no longer pending in any administrative or judicial forum;~~, provided that:

(a) An ~~ALJ~~Administrative Law Judge may communicate with another ~~ALJ~~Administrative Law Judge relating to the merits of cases ~~assigned to either ALJ~~ at any time.

(b) Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits ~~are authorized;~~ provided that:

(i) ~~the ALJ~~The Administrative Law Judge reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication~~,~~; and

(ii) ~~the ALJ~~The Administrative Law Judge makes provision to promptly ~~to~~ notify all

other parties of the substance of the ex parte communication and allows an opportunity to respond.

(2) ~~If any ALJ receives~~Should an Administrative Law Judge receive a communication prohibited by this Rule, the ~~ALJ~~Administrative Law Judge shall ~~file with the Clerk any written communication received and a memorandum stating the substance of any oral communication received. The Clerk shall forthwith~~ notify all parties of the receipt of such communication and its ~~availability for inspection.~~ content.

11 SERVICE

(1) A party filing ~~any~~ a document or other submission with the Office of State Administrative Hearings shall simultaneously serve a copy of the document or submission on each party of record. Service shall be by first class mail, fax, e-mail, or personal delivery. Service by mail shall be complete upon mailing by first class mail, with proper postage attached~~, to a party's address of record~~.

(2) Service of a subpoena shall be made pursuant to Rule 19.

(3) Every ~~submission~~filing shall be accompanied either by an acknowledgment of service from the person served ~~or~~, by his or her authorized agent for service, or by a certificate of service stating the date, place, and manner of service ~~and~~, as well as the name and address of the persons served.

(~~3~~4) The Clerk shall maintain and, upon request, furnish to parties of record ~~in a matter~~ a list containing the name, ~~service~~ address, and telephone number of each ~~other party or its~~party's attorney, ~~or~~or each party's duly authorized representative.

12 CONSOLIDATION ~~AND~~; SEVERANCE

(1) In ~~proceedings~~cases involving common issues of law or fact, ~~whenever it appears to the ALJ that~~ an Administrative Law Judge may order a joint hearing ~~would serve~~ to expedite or simplify consideration of ~~those issues and that no party would be prejudiced thereby, the ALJ may, upon motion of any party or the ALJ, consolidate such proceedings for hearing on~~ any or all of the ~~matters at issue~~issues in such ~~proceedings.~~ cases.

(2) ~~Whenever the ALJ~~If an Administrative Law Judge determines that it would be more conducive to an expeditious, full, and fair hearing for any party or issue to be heard ~~in separate proceedings, the ALJ~~separately, the Administrative Law Judge may~~, upon motion of any party or the ALJ,~~ sever the party or issue for ~~such~~a separate hearing.

13 SUBSTITUTION OF PARTIES; INTERVENTION; JOINDER

(1) ~~The ALJ~~An Administrative Law Judge may, upon motion, permit ~~such~~ the substitution of ~~parties~~a party as justice requires.

(2) ~~Any~~(a) A person seeking to intervene shall file a motion in accordance with Rule ~~Rule~~ 16 stating ~~therein~~ the specific grounds ~~upon which~~ for intervention ~~is sought~~ and attach~~ing~~ a pleading setting forth the claim or defense for ~~which~~ intervention ~~is sought~~. The grant or denial of ~~such a~~the motion to intervene shall be governed by the APA. ~~In order to~~

(b) To avoid undue delay or prejudice to the ~~adjudication of the rights of the~~ original parties, ~~the ALJ~~an Administrative Law Judge may limit the factual or legal issues ~~which~~ that may be raised by ~~the~~an intervenor.

(3) An Administrative Law Judge is not authorized to join a party to any proceeding without the party's consent.

14 PREHEARING CONFERENCES

(1) ~~The ALJ~~An Administrative Law Judge may~~, either on the ALJ's own initiative or at the request of any party, direct~~ order the parties ~~or their attorneys or duly authorized representatives~~ to appear at a specified time and place for one or more conferences before or during a hearing ~~or to submit written proposals or correspondence for the purpose of considering any of the matters set forth in paragraph (2) of this Rule~~. At the discretion of the ~~ALJ~~Administrative Law Judge, prehearing conferences may be conducted in whole or in part ~~via~~ by telephone ~~conferences~~.

(2) ~~In conferences held or in proposals submitted pursuant to paragraph (1) of this Rule, the following matters may be considered:~~ The Administrative Law Judge may require a party to submit written proposals regarding:

(a) ~~settlement of the matter ;~~

~~(b)~~ ~~the use of~~ a schedule for ~~the completion of~~ prehearing procedures ~~and~~ , including the submission and disposition of all prehearing motions;

~~(c~~

(b) simplification, clarification, amplification, or limitation of the issues;

~~(d) the~~

(c) evidentiary matters, such as:

(i) identification of documents expected to be tendered by ~~any~~ a party;

~~(e)~~

(ii) admissions and stipulations of facts and ~~of~~ the genuineness and admissibility of documents;

~~(f) the~~

(iii) identification of persons expected to be called as witnesses by ~~any~~ a party and the substance of ~~their~~ the anticipated testimony;

~~(g) the~~

(iv) identification of expert witnesses expected to be called by ~~any~~ a party to testify and the substance of the facts and opinions to which the expert witness is expected to testify and a summary of the grounds for each opinion;

~~(h) matters of which official notice by the ALJ is sought;~~

~~(i~~

(v) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits or other submissions proposed by any party; ~~and~~

~~(j) such~~

(d) matters for which official notice is sought; and

(e) other matters ~~as~~ that may expedite ~~the adjudication of the matter or that the ALJ~~hearing procedures or that the Administrative Law Judge otherwise deems appropriate.

~~(3) Based upon prehearing conferences or proposals submitted pursuant to paragraph (1) of this Rule, the ALJ may issue a prehearing order containing the issues not disposed of by admissions or agreements of the parties, those facts in dispute and not in dispute, the witnesses and documents the parties intend to tender, the matters for which the parties seek official notice, and such other matters as may expedite the adjudication of the matter. Issues, factual matters, witnesses and documents not included in the prehearing order shall not be considered, allowed to testify, or admitted into evidence over the objection of any party unless the prehearing order is amended by the ALJ. Amendments of the prehearing order may be made until the completion of the hearing for good cause shown including excusable neglect and to add newly discovered evidence or witnesses or to add rebuttal evidence or witnesses when the need for such could not have been reasonably foreseen prior to the entry of the prehearing order. In determining whether to allow an amendment to the prehearing order the ALJ may consider the prejudice imposed upon the parties by the allowance or disallowance of the proposed amendment.~~

15 SUMMARY ~~DETERMINATION~~ JUDGMENT

(1) A~~ny~~ party may move, based on supporting affidavits or other probative evidence, for ~~a~~ summary ~~determination~~judgment in its favor ~~up~~on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. There shall be included in the motion or ~~annexed~~attached thereto a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Such a motion must be filed and served on all parties no later than ~~10 days after the filing of the prehearing order or~~ thirty (30) days before the date set for hearing~~, whichever is later; provided that upon~~. For good cause shown ~~the~~, a motion may be filed at any time before the close of the hearing.

(2) A~~ny~~ party may file and serve a response to a motion for summary ~~determination~~judgment or a counter-~~-~~motion for summary ~~determination~~judgment within twenty (20) days ~~after~~ of service of the motion for summary ~~determination.~~judgment. The response shall include a short and concise statement of each of the material facts as to which ~~it is contended~~the party opposing summary judgment contends there exists a genuine issue for determination.

(3) When a motion for summary ~~determination~~judgment is ~~made and~~ supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination ~~in the hearing~~.

(4) Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all ~~papers or parts thereof referred to~~ documents to which reference is made in an affidavit shall be attached thereto and served therewith. Where facts necessary for summary ~~determination~~judgment are a matter of expert opinion, such facts may be resolved on the basis of uncontroverted affidavits or testimony of expert opinion.

(5) The ~~ALJ~~Administrative Law Judge may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, ~~findings of fact~~ and briefs. If the period required to rule upon the motion will extend beyond the date set for the hearing, the ~~ALJ may, on the ALJ's own initiative,~~ Administrative Law Judge may continue the hearing ~~until the ALJ rules upon the motion~~.

~~(6) The ALJ may determine that the matter may better be resolved via an evidentiary hearing and is inappropriate for resolution by a summary determination motion. If the ALJ decides to deny a summary determination motion, the ALJ shall notify the parties in writing of that determination.~~ (6) The Administrative Law Judge shall rule on a motion for summary judgment in writing.

(7) If all factual issues are decided by summary ~~determination, no hearing will be held and the ALJ shall prepare~~ judgment, the Administrative Law Judge shall issue an Initial or Final Decision ~~under Rule Rule 27. If summary determination is denied or if partial summary determination is granted, the ALJ shall issue a memorandum opinion and order, interlocutory in nature, and the hearing will proceed on the remaining issues and factual matters still in dispute~~.

16 MOTIONS

(1) ~~An application~~ All requests made to the ~~ALJ for an order requiring any party to take any action or for the entry of any interlocutory ruling~~ Administrative Law Judge shall be made by motion. Unless made during the hearing, motions shall be in writing, shall state specifically the grounds therefor, and shall describe the action or order sought. A copy of ~~any~~ all written ~~motion~~motions shall be served ~~upon all parties~~ in accordance with Rule ~~Rule~~ 11.

(2) ~~Within 10~~A response to a motion may be filed within ten (10) days after service of ~~any~~ the written motion~~, any party to the proceedings may file a response to the motion~~. The time for response may be shortened or extended by the ~~ALJ~~Administrative Law Judge for good cause ~~shown. Any party desiring resolution of a motion~~ prior to the expiration of the ten (10) day response period ~~shall file a written~~. Either party may request ~~for~~ an expedited ~~consideration with the~~

~~motion~~ruling.

(3) Unless otherwise provided ~~by the ALJ or a rule in this Chapter relating to a specific type of motion~~, all motions shall be filed at least ten (10) days prior to the date set for hearing unless the need or opportunity for the motion could not reasonably have been foreseen~~, 10 days prior to said date in which case the motion~~. Such motions shall be filed ~~or presented~~ as soon as the need or opportunity for the motion becomes reasonably foreseeable.

(4) All motions, and responses thereto, shall include ~~or be accompanied by~~ citations of supporting authorities and, ~~when a motion depends upon factual allegations~~if germane, supporting affidavits or citations to evidentiary materials of record.

(5) The ~~ALJ may, either at the ALJ's own initiative or at the request of any party,~~ Administrative Law Judge may determine whether the nature and complexity of the motion justifies a hearing on the motion and notify the parties accordingly. A request for a hearing on a motion must be made in writing and filed by the date the response to the motion is ~~to be filed.~~due. Notice of a hearing on a motion shall be given by the ~~ALJ~~Administrative Law Judge at least five (5) days prior to the date set for ~~the~~ hearing. At the discretion of the ~~ALJ, such hearings may be conducted, in whole or in part, via telephone. If~~Administrative Law Judge, a hearing on a motion ~~is not requested or deemed justified, the ALJ shall rule upon the motion forthwith~~may be conducted in whole or in part by telephone. The Administrative Law Judge shall rule upon motions promptly.

(6) Multiple motions may be consolidated for hearing or ~~heard at a~~ prehearing conference. The ~~ALJ~~Administrative Law Judge may ~~call for~~order the submission of briefs~~, f~~ or oral argument~~, or both, either in support of or in opposition~~ relative to any motion.

17 WITHDRAWAL OF ~~REQUEST FOR~~ HEARING ~~OR~~REQUEST; SETTLEMENT

(1) ~~The~~ A party requesting ~~the~~ a hearing may withdraw ~~a~~ the request for hearing at any time, in writing or otherwise, whereupon the ~~ALJ~~Administrative Law Judge shall enter an order ~~dismissing the matter~~of dismissal with prejudice.

(2) The parties may agree to settle the matters in dispute at any time, whereupon the ~~ALJ~~Administrative Law Judge shall enter an order ~~dismissing the matter~~of dismissal with prejudice.

18 EVIDENCE; OBJECTIONS; OFFICIAL NOTICE

(1) As provided in the APA, the ~~ALJ~~Administrative Law Judge shall apply the rules of evidence as applied in the trial of civil non-jury cases ~~in the superior courts and may,~~ when necessary to ascertain facts not reasonably susceptible of proof under such rules~~,~~. The Administrative Law Judge may consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. At the discretion of the ~~ALJ, such~~Administrative Law Judge, evidence ~~which~~ that may be admitted includes ~~the following~~:

(a) ~~records~~ Records, reports, statements, plats, maps, charts, surveys, studies, analyses, or data compilations, in any form, of public offices or agencies, setting forth (i) the activities of the office or agency~~,~~; or (ii) matters observed pursuant to ~~duty imposed by law as to which matters there was a~~ a legal duty to report~~,~~; or (iii) factual findings resulting from an investigation or research not performed in conjunction with the matter being heard, and carried out pursuant to authority granted by law~~,~~ unless its probative value cannot be determined, or it lacks trustworthiness ~~due to the sources of information or other circumstances~~;

(b) ~~reports~~ Reports, records, statements, plats, maps, charts, surveys, studies, analyses, or data compilations after testimony by an expert witness that the witness prepared ~~such~~ the document and that it is correct to the best of the witness' knowledge, belief, and expert opinion;

(c) ~~to the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements~~ Statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of a witness, by other expert testimony, or by official notice to the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination;

(d) ~~any medical~~ Medical, psychiatric, or psychological evaluations or scientific or technical reports, records, statements, plats, maps, charts, surveys, studies, analyses, or data compilations of a type routinely submitted to and relied upon by the Referring Agency in the normal course of its business; and

(e) documentary evidence in the form of copies if the original is not readily available, if its use would unduly disrupt the records of the possessor of the original, or by agreement of the parties. Upon request, parties shall have an opportunity to compare the copy with the original. ~~Documentary evidence may also be received in the form of excerpts, charts, or summaries when, in the discretion of the ALJ, the use of the entire document would unnecessarily add to the record's length. The entire document shall be made available for examination or copying, or both, by other parties at a reasonable time and place.~~

(2) Where practicable, a copy of each exhibit identified or tendered at the hearing shall be furnished to the ~~ALJ~~Administrative Law Judge and the other parties when first presented at the hearing.

(3) The ~~ALJ~~Administrative Law Judge shall give effect to statutory presumptions and the rules of privilege recognized by law.

(4) If scientific, technical, or other specialized knowledge may ~~assist the ALJ to~~help the Administrative Law Judge understand the evidence or ~~to~~ determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education~~,~~ may testify thereto in the form of an opinion ~~or otherwise~~. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the reasons therefor~~e~~ without prior disclosure of the underlying facts or data, unless the ~~ALJ~~Administrative Law Judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(5) The ~~ALJ shall have the discretion to~~ Administrative Law Judge may authorize or require the submission of written direct testimony ~~in written form. Unless otherwise ordered by the Judge, a party submitting such testimony in support of an issue on which it has the burden of proof shall file and serve the testimony upon all parties no less than 15 days before the hearing. All other such testimony shall be filed and served upon all parties no less than 5 days before the hearing. The admissibility of the evidence contained in written testimony shall be subject to the same rules as if the testimony were produced under oral examination. The witness presenting the statement shall swear to or affirm the statement at the hearing and shall be subject to full cross-examination during the course of the hearing.~~pursuant to Rule 20.

(6) Whenever ~~any~~ oral testimony sought to be admitted is excluded by the ~~ALJ~~Administrative Law Judge, the proponent of the testimony may make an offer of proof by means of a brief statement on the record describing the excluded testimony. Whenever ~~any~~ documentary or physical evidence or written testimony sought to be admitted is excluded, it shall remain a part of the record as an offer of proof.

(7) All objections shall include a statement of the legal basis for the objection and shall be made promptly or deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(8) ~~Official notice may, in~~In the discretion of the ~~ALJ,~~ Administrative Law Judge, official notice may

be taken of judicially recognizable facts. Any documents officially noticed shall be admitted into the record of the hearing. All parties shall be notified either prior to or during the hearing of the ~~material~~ evidence noticed ~~and any~~. A party shall on a timely request be afforded an opportunity to contest the matters ~~of which official notice is taken.~~

~~(9) The ALJ may take official notice of the contents of policy and procedure manuals promulgated by State agencies for which OSAH conducts hearings. Unless such manuals have been adopted in accordance with the rulemaking procedures set out in O.CGA § 50-13-4, the ALJ shall cause the notice of hearing to identify such manuals by name and by publishing agency, to indicate that official notice will be taken of such manuals subject to the opportunity to contest such materials pursuant to paragraph (8) of this Rule, and to notify all parties where copies of the manuals may be inspected. Any party may introduce into evidence copies of particular portions of any manual~~ officially noticed ~~under this Rule upon which the party relies without further authentication. In addition, the ALJ or any party may incorporate material from any manual so noticed in a brief, motion, pleading, order or decision by quotation or paraphrase thereof, by reference, or otherwise. Official notice may also be taken of any fact alleged, presented, or found in any other hearing before an ALJ, or of the status and disposition of any such hearing; provided, that any party shall on timely request be afforded an opportunity to contest the matters of which official notice is taken.~~

~~(10) The weight to be given to any evidence shall be determined by the ALJ based upon its reliability and probative value.~~

19 ~~SUBPEONAS AND~~SUBPOENAS; NOTICES TO PRODUCE

(1) ~~The ALJ shall have the authority to issue subpoenas requiring~~Subpoenas may be issued which require the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings provided for by these Rules. The party on whose behalf the subpoenas are issued shall be responsible for completing and serving the subpoenas sufficiently in advance of the hearing to secure the attendance of a witness or the deposed testimony of the witness at the time of the hearing.

(2) ~~Notice of service of subpoenas~~Subpoenas shall be in writing and filed at least five (5) days prior to the hearing or deposition at which ~~the attendance of the~~ a witness or ~~the production of documents~~ document is sought, shall be served upon all parties, and shall identify the witnesses whose testimony is sought or the documents or objects sought to be produced. Every subpoena shall ~~be issued by the ALJ under the seal of OSAH and shall~~ state the title of the action. ~~The party requesting the subpoenas shall be responsible for filling in the subpoenas in a manner consistent with the request for subpoenas and serving the same sufficiently in advance of the hearing to secure the attendance of the witness or the availability of the witness' testimony on deposition at the time of the hearing.~~

(3) ~~Any party, other than the Referring Agency, which is not represented by counsel may be relieved by the ALJ of the requirements of paragraph (2) above other than the service requirements. At the discretion of the ALJ, such a party may obtain subpoenas by orally providing the Clerk with the names of the persons desired to be subpoenaed and a description of the testimony or documents or objects sought. If such a request for subpoenas is made orally and approved by the ALJ, the Clerk shall reduce the request to writing and shall have a copy of the request served upon all other parties.~~Subpoenas may be obtained from the Office of State Administrative Hearings web site or from the Clerk.

(4) A subpoena may be served at any place within ~~this State~~Georgia and by any sheriff, by ~~his~~a sheriff's deputy, or by any other person not less than eighteen (18) years of age. Proof of service may be shown by ~~return or~~ certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail, and the return receipt shall constitute prima-facie proof of service. Service upon a party may be made by serving ~~his~~ the party's counsel of record. Fees and mileage shall be paid to the recipient of a subpoena in accordance with O.C.G.A. § 24-10-24.

(5) Once issued, a subpoena may be quashed by the ~~ALJ~~Administrative Law Judge if it appears that

the subpoena is unreasonable or oppressive, or that the testimony ~~or,~~ documents, or objects sought are irrelevant, immaterial, or cumulative and unnecessary to a party's preparation and presentation of its position at the hearing, or that ~~for other good reasons~~ basic fairness dictates that the subpoena should not be enforced. ~~The ALJ may also condition denial of a motion to quash a~~ The Administrative Law Judge may require the party issuing the subpoena ~~upon the advancement by the person in whose behalf the subpoena is issued of~~ to advance the reasonable cost of producing the documents or objects.

(6) Once issued and served, unless otherwise conditioned or quashed, a subpoena shall remain in effect until the close of the hearing or until the witness is excused, whichever comes first.

(7) ~~Where a party desires~~ A party may serve a notice to produce in order to compel production of documents or objects in the possession, custody, or control of another party in lieu of serving a subpoena under this Rule~~, the party desiring the production may serve a notice to produce upon the other party~~. Service may be perfected in accordance with paragraph (4) ~~above~~, but no fees or mileage shall be allowed therefor. Paragraph (5) ~~above~~ shall ~~also~~ apply to such notices. ~~The notice shall be in writing, signed by the party seeking production of the evidence, or his attorney, and shall be directed to the opposite party or his attorney. A copy of any notice to produce shall be filed simultaneously with the Clerk.~~

~~The~~(8) A notice to produce shall be in writing~~,~~ and shall be signed by the party or by the party's attorney who is seeking production of ~~the evidence, or his attorney, and~~documents or objects. The notice shall be directed to the ~~opposite~~opposing party or ~~his~~the opposing party's attorney. A copy of any notice to produce shall be filed ~~simultaneously~~ with the Clerk.

20 DEPOSITIONS ~~AND~~; WRITTEN ~~QUESTIONS TO SECURE~~DIRECT TESTIMONY

(1) ~~Any~~At any time during the course of a proceeding, the ~~ALJ may, in the ALJ's discretion,~~ Administrative Law Judge may order that the testimony of a witness is to be taken by deposition or ~~on~~ in response to written questions. ~~Application to take a deposition in lieu of personal appearance at the hearing shall be made by motion filed with the Clerk and served upon all parties in accordance with Rule Rule 11. Such motion shall state the name and address of the witness, the time when, the place where and the subject matter about which the witness would be deposed, the relevance of such testimony, and the specific reason why the witness cannot or will not appear to testify at the hearing.~~

(2) ~~In the exercise of the ALJ's discretion in deciding whether to order testimony by deposition the ALJ may consider, among other factors:~~

~~(a) whether requiring the appearance of a witness subject to subpoena would endanger the witness' health or work an undue hardship;~~

~~(b) whether a showing has been made that a non-resident potential witness who is not subject to subpoena in this State and is willing to appear voluntarily to be deposed in the jurisdiction of the witness' residence would be subject to being compelled to appear and be deposed under any law in the jurisdiction of the witness' residence (e.g., a UniformForeign Depositions Act); or~~

~~(c) whether ordering the taking of testimony by deposition will result in an undue burden on any other party, an undue delay in the proceeding, or any injury to other parties from the delay.~~

~~(3) If the ALJ orders testimony by deposition, the ALJ~~The Administrative Law Judge may specify whether the scope of examination ~~upon~~by deposition should be limited ~~in any way, and if so, how~~.

(~~4)~~ 3) Procedures for oral depositions to secure testimony shall be as follows:

(a) Examination and cross-examination of a deponent shall proceed under the same rules of evidence as are applicable to hearings under this Chapter. Each deponent shall be duly sworn by an officer authorized to administer oaths by the laws of the United States or the place where the examination is held, and the

~~deponent's~~deponent's testimony shall be recorded and transcribed. Any objections made at the time of the deposition to the qualifications of the officer taking the deposition, to the manner ~~of the taking of~~in which the deposition was taken, to the evidence presented, to the conduct of any party, or ~~any other objection~~ to the proceedings shall be recorded and included in the transcript. Evidence ~~objected to~~ to which there is an objection shall be taken subject to the objection.

(b) Any error or irregularity in the notice of taking testimony by deposition shall be deemed waived unless written objection thereto is filed with the Clerk and served upon all parties prior to the deposition in accordance with Rule ~~Rule~~ 11. Any objection relating to the qualifications of the officer before whom the deposition is to be taken shall be deemed waived unless made before the deposition begins or as soon thereafter as the alleged lack of qualification becomes known or ~~could be~~should have been discovered in the exercise of reasonable diligence.

(c) Any objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make ~~it~~ an objection before or during the deposition unless the ground of the objection is one which might have been ~~obviated or~~ removed if presented at the time. Any error or irregularity occurring during the ~~taking of the~~ deposition in the ~~administering~~ administration of the oath or affirmation, the manner ~~of the taking of~~in which the deposition was taken, the form of questions or the answers thereto, the conduct of any party, or any error of a kind which might ~~be obviated,~~ have been removed or cured if timely raised, shall be deemed waived unless reasonable objection thereto is made at the deposition.

(d) Any error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, certified, transmitted, filed, or otherwise dealt with by the officer taking the deposition shall be deemed waived unless a motion to strike all or a part of the ~~said~~ deposition is made with reasonable promptness after such error or irregularity is~~,~~ or ~~in the exercise of reasonable diligence~~ should have been~~,~~ ascertained in the exercise of reasonable diligence.

(e) The deposition shall be transcribed, certified ~~by the officer taking the same~~, and filed with the Clerk. Any party who contends that the transcript does not truly or fully disclose what transpired at the deposition shall file a notice with the Clerk specifying alleged errors and omissions within ten (10) days of ~~the~~ filing ~~of~~ the deposition. If the parties are unable to agree as to the alleged errors and omissions, the ~~ALJ~~Administrative Law Judge shall set the matter down for hearing with notice to all parties ~~and shall resolve~~for the purpose of resolving the differences so as to make the record conform to the truth.

(f) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and ~~annexed~~attached to and ~~returned~~filed with the deposition, and may be inspected and copied by a~~ny~~ party. Copies may be substituted for originals if each party is given an opportunity to compare the proffered copy with the original to verify its correctness.

(5) ~~Application to take~~The Administrative Law Judge may order that the direct testimony ~~by~~of a witness be taken in written ~~questions~~form. A motion for written direct testimony shall be made and considered in the same manner as prescribed for depositions in paragraphs (1), (2~~)~~), and (3) of this Rule. ~~If the ALJ orders the taking of testimony on written questions~~Should the Administrative Law Judge order written direct testimony of witnesses, each written question shall be answered separately and fully in writing under oath~~,~~ unless objected to, in which ~~event~~ case the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and any objections shall be signed by the attorney making them.

(6) Unless otherwise ordered by the Administrative Law Judge, a party submitting written direct testimony in support of an issue on which it has the burden of proof shall file and serve the

written direct testimony upon all parties no less than fifteen (15) days before the hearing. All other testimony shall be filed and served upon all parties no less than five (5) days before the hearing. The admissibility of the evidence contained in written testimony shall be subject to the same rules as if the testimony were produced under oral examination. The witness presenting the statement shall swear to or affirm the statement at the hearing and shall be subject to full cross-examination.

(7) Subject to appropriate rulings on objections, a deposition or written ~~questions and answers~~ direct testimony shall be received in evidence as if the testimony ~~contained therein~~ had been given by the witness before the ~~ALJ~~Administrative Law Judge.

(~~7~~) 8) Whenever used in this Rule, the word "witness" shall be construed to include parties.

21 NATURE OF PROCEEDINGS

(1) In ~~any~~ a hearing conducted under this Chapter, the ~~ALJ~~Administrative Law Judge shall make an independent determination on the basis of the competent evidence presented at the hearing. Except as provided in Rule ~~Rule~~ 29, the ~~ALJ~~Administrative Law Judge may make any disposition of the matter ~~as was~~ available to the Referring Agency.

(2) If a party includes in its pleadings a challenge to the regularity of the process by which the Referring Agency reached a decision, the ~~ALJ~~Administrative Law Judge shall take evidence and reach a determination on such a challenge at the outset of the hearing. The party making such a challenge shall have the burden of proof. If the ~~ALJ~~Administrative Law Judge finds the challenge meritorious, the ~~ALJ~~Administrative Law Judge may remand the matter to the Referring Agency.

(3) The hearing shall be de novo in nature and the evidence on the issues in a~~ny~~ hearing ~~is~~ shall not be limited to the evidence presented to or considered by the Referring Agency prior to its decision.

(4) Unless otherwise provided by federal or state statute or ~~rule~~regulation, the standard of proof on all issues in a hearing shall be a preponderance of the evidence.

22 HEARING PROCEDURE

(1) The ~~ALJ~~Administrative Law Judge shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. ~~For these purposes, the ALJ may~~The Administrative Law Judge may, among other things:

(a) arrange for and issue notices of the date, time, and place of hearings and prehearing conferences;

(b) establish the methods and procedures to be used in the development of the evidence;

(c) hold prehearing conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(d) administer oaths and affirmations;

(e) regulate the course of the hearing and govern the conduct of the participants;

(f) examine witnesses called by the parties;

(g) rule on, admit, exclude, or limit evidence;

(h) establish the time for filing motions, testimony, and other written evidence, exhibits, briefs, proposed findings of fact and conclusions of law, and other submissions;

(i) rule on motions and other procedural matters before the ~~ALJ~~Administrative Law Judge, including but not limited to motions to dismiss for lack of jurisdiction or for summary ~~determination in accordance with Rule Rule 15~~judgment;

(j) order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;

(k) allow ~~such~~ cross-examination as ~~may be~~ required for a full and true disclosure of facts;

(l) order that any information so entitled under applicable state or federal ~~rule or~~ statute or regulation be treated as confidential information and be accorded the degree of confidentiality required thereby;

(m) reprimand or exclude from the hearing any person for any indecorous or improper conduct ~~committed in the ALJ's presence~~;

(n) subpoena and examine witnesses or evidence the ~~ALJ~~Administrative Law Judge believes necessary for a full and complete record; and

(o) take any action not inconsistent with this Chapter or the APA ~~for the maintenance of~~to maintain order at the hearing and for the expeditious, fair, and impartial ~~conduct of the proceeding~~hearing.

(2) When two or more parties have substantially similar interests and positions, the ~~ALJ~~Administrative Law Judge may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to argue motions and objections on behalf of those parties. Attorneys may~~, however, at the ALJ's discretion,~~ engage in cross-examination relevant to matters which~~, in the ALJ's opinion,~~ the Administrative Law Judge finds have not been adequately covered by previous cross-examination.

(3) Whenever ~~any~~ a party ~~raises issues under~~ asserts that the laws or regulations relevant to the case violate either the Georgia Constitution or United States Constitution, ~~the sections of any laws or rules constitutionally challenged and~~ any constitutional provisions such laws or ~~rules~~regulations are alleged to violate must be stated with specificity. In addition, an allegation of unconstitutionality must be supported by a statement either of the basis for the claim of unconstitutionality as a matter of law or of the facts under which the party alleges that the law or rule is unconstitutional as applied to the party. ~~Although the ALJ is not authorized to resolve constitutional challenges to statutes or rules, the ALJ may, in the ALJ's discretion, take evidence and make findings of fact relating to such challenges.~~

(4) ~~Any hearing which is required or permitted hereunder~~A hearing, or a portion thereof, may be conducted by ~~utilizing remote telephonic communications~~alternate means if the record reflects that all parties have consented ~~to the conduct of the hearing by use of such communications and that such procedure~~and that the alternate means will not jeopardize the rights of ~~any~~ a party to the hearing.

(5) ~~In proceedings before an ALJ, if any party or an~~Upon application by a party, the Administrative Law Judge shall certify the facts to the Superior Court of the county in which a party, agent, or employee of a party~~.~~:

(a) disobeys or resists any lawful order or process; ~~or~~

(b) neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; ~~or~~

(c) refuses to appear after having been subpoenaed; ~~or,~~

(d) upon appearing, refuses to take the oath or affirmation as a witness; ~~or~~

(e) after taking the oath or affirmation, refuses to testify; or

(f) disobeys any other order issued by an ~~ALJ, any party may apply to, and the ALJ shall certify the facts to, the superior court of the county where the offense is committed for~~ Administrative Law Judge

for a determination of the appropriate action, including a finding of contempt.

23 RECORD OF HEARINGS

(1) All ~~intermediate~~ rulings, orders, and notices issued by the ~~ALJ~~Administrative Law Judge, all pleadings and motions, all recordings or transcripts of oral hearings or arguments, all written direct ~~and rebuttal~~ testimony, ~~any~~ all other data, studies, reports, documentation, information, and other written material of any kind submitted in the proceedings, a statement of matters officially noticed, all proposed findings of fact, conclusions of law, and briefs, as well as the Initial or Final Decision shall be a part of the hearing record and shall be available to the public, except as provided ~~in any~~ by applicable federal or ~~State~~state law or ~~rule~~regulation according confidentiality~~, in the office of the Clerk as soon as received in that office~~.

(2) Evidentiary hearings shall be either stenographically reported verbatim or ~~tape~~ recorded by electronic means. Upon written request, a ~~transcript~~ copy of the record of any oral proceeding ~~or part thereof~~ shall be furnished to any party at the requesting party's expense.

(3) All documentary and physical evidence shall be retained by the Clerk unless and until the record is transmitted to the Referring Agency pursuant to Rule ~~Rule~~ 33.

24 PROPOSED FINDINGS OF FACT~~,~~ AND CONCLUSIONS OF LAW ~~AND~~ ; BRIEFS

At the conclusion of the hearing, the ~~ALJ~~Administrative Law Judge may require ~~the parties~~a party to submit proposed findings of fact, conclusions of law, and briefs ~~in support thereof. If required, the ALJ shall specify the~~on a date ~~by which they shall be filed with the Clerk and served on all parties.~~certain. Reply briefs may be ~~allowed in the~~filed at the Administrative Law Judge's discretion ~~of the ALJ~~.

25 NEWLY DISCOVERED EVIDENCE

Prior to the entry of an Initial or Final Decision, a~~ny~~ party may move the ~~ALJ~~Administrative Law Judge for an order allowing the introduction of additional evidence on the basis that ~~said~~such evidence is newly discovered and was not discoverable in the exercise of reasonable diligence at the time of the hearing. If the ~~ALJ~~Administrative Law Judge determines that ~~such~~the evidence is ~~proper~~ newly discovered ~~evidence~~, and that it may materially impact ~~upon the decision to be rendered,~~ the ~~ALJ~~case, the Administrative Law Judge shall hear and receive such evidence in the manner prescribed for the receipt of evidence by these Rules.

26 CLOSURE OF HEARING RECORD

Except as provided in this Rule or ~~unless~~ otherwise ordered ~~by the ALJ~~, the record shall be closed at the conclusion of the evidentiary hearing. ~~If the ALJ requests~~Should the Administrative Law Judge request the preparation of a transcript or require~~s~~ or authorize~~s~~ the filing of proposed findings of fact~~,~~ and conclusions of law, or ~~post-hearing~~ briefs, the record shall be deemed closed upon the receipt ~~by the Clerk~~ of the transcript or upon the expiration of the time allowed for the required or authorized filings, whichever date comes last.

27 INITIAL OR FINAL DECISION

The ~~ALJ~~Administrative Law Judge shall review and evaluate all of the admitted evidence ~~as well as~~ and interlocutory rulings, and shall ~~either rule orally from the bench, stating~~ issue a written Initial or Final

Decision, setting forth the findings of fact~~,~~ and conclusions of law~~, and an Initial Decision or a Final Decision in the record, or may issue and file written findings, conclusions, and an~~. The Initial or Final Decision ~~with the Clerk who~~ shall ~~immediately serve copies upon all parties or their counsel of record. The ALJ shall render an Initial or Final Decision~~be issued within the time provided by ~~an~~ applicable state ~~statute~~ or federal statute or ~~rule or, in any event,~~ regulation, or within thirty (30) days ~~after the close~~ of the hearing record ~~unless~~ closes. Should the ~~ALJ determines~~Administrative Law Judge determine that the complexity of the issues and the length of the record require ~~an order extending such period in which event~~additional time to issue the ~~ALJ~~Initial or Final Decision, the Administrative Law Judge shall ~~render~~enter an order setting forth the earliest practicable date certain for the issuance of an Initial or Final Decision ~~at the earliest date practicable~~.

28 MOTIONS FOR RECONSIDERATION OR REHEARING; STAY OF INITIAL OR FINAL DECISION

(1) A motion for reconsideration or rehearing of an Initial or Final Decision will be considered only if the motion is filed within ten (10) days of the entry of the Initial or Final Decision. ~~However, the~~ The time for filing such a motion may be extended by the ~~ALJ~~Administrative Law Judge for good cause.

(2) The filing of such a motion shall not operate as a stay of enforcement of the Initial or Final Decision ~~of~~, unless the ~~ALJ. However, the ALJ may grant a stay upon appropriate terms for good cause shown if the ALJ~~Administrative Law Judge finds that the public health, safety, and welfare will not be harmed by the issuance of a stay.

(3) The ~~ALJ~~Administrative Law Judge shall not grant a motion for rehearing until after the expiration of the period for a response by any other party provided by Rule ~~Rule~~ 16(2).

29 REMANDS

(1) The ~~ALJ~~Administrative Law Judge may~~, either on the ALJ's own motion or at the motion of any party,~~ remand a~~ny~~ matter to the Referring Agency at any time. ~~In exercising discretion relating to the remand of a matter, the ALJ~~The Administrative Law Judge shall consider, among other things, the possible delay created by a remand and its impact upon the parties~~,~~ and the likelihood that a remand could cause a change in the position taken by the Referring Agency whose action is being reviewed~~, and the need for the peculiar expertise and experience of the Referring Agency in insuring a just and orderly administrative process~~.

(2) The ~~ALJ~~Administrative Law Judge shall remand to the Referring Agency a~~ny~~ matter contesting the denial of a permit or license in which the ~~ALJ~~Administrative Law Judge concludes that the denial was unlawful ~~and~~. The Administrative Law Judge shall include ~~in a written order of remand~~ the findings of fact and conclusions of law required by Rule ~~Rule~~ 27 in a written order of remand.

30 DEFAULT

(1) ~~If~~A default order may be entered against a party that fails to participate in any stage of a proceeding, a party that fails to file any ~~pleading~~ required ~~by an ALJ, this chapter~~pleading, or ~~other applicable law or agency rule, or~~ a party that fails to comply with an order ~~or subpoena~~ issued by the ~~ALJ, the ALJ, either on the ALJ's own motion or on the motion of any party, may enter a default order against the offending party.~~Administrative Law Judge. Any ~~such~~default order shall specify the grounds for the order.

(2) Any default order may provide for a default as to all issues, a default as to specific issues, or other limitations, including limitations on the presentation of evidence and on the defaulting party's continued participation in the proceeding. ~~In determining whether to enter a default and in determining the appropriate penalty for a default, the ALJ shall give due regard for the interests of justice, the nature of the failure of the party in default, and the need for the orderly and prompt conduct of the proceeding.~~

~~(3) Within ten days of the entry of a default order, the party against whom it was issued may file a written motion requesting that the order be vacated or modified and stating the grounds for said motion. The ALJ may allow a default to be opened where the failure of the party in default was the result of providential cause or excusable neglect or where the ALJ, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the ALJ.~~

~~(4)~~ After issuing a default order, the ~~ALJ shall conduct any further proceedings~~ Administrative Law Judge shall proceed as necessary to ~~complete the proceeding~~ resolve the case without the participation of the ~~party in default~~defaulting party, or with such limited participation as ~~determined appropriate under subparagraph (2) of this paragraph~~the Administrative Law Judge deems appropriate, and shall determine all issues in the proceeding, including those affecting the party in default.

(3) Within ten (10) days of the entry of a default order, the party against whom the default order was issued may file a written motion requesting that the order be vacated or modified, and stating the grounds for the motion.

(4) The Administrative Law Judge may decline to enter a default or may open a default previously entered if the party's failure was the result of providential cause or excusable neglect, or if the Administrative Law Judge determines from all of the facts that a proper case has been made to deny or open the default.

(5) If a party fails to attend an evidentiary hearing after having been given written notice ~~thereof~~, the ~~ALJ~~Administrative Law Judge may proceed with the hearing in the absence of the party unless the absent party is the party who requested the hearing, in which case the ~~ALJ~~Administrative Law Judge may dismiss the action ~~on the motion of any party or on the ALJ 's own motion~~. Failure of a party to appear at the time set for hearing shall constitute a failure to ~~attend~~appear, unless excused ~~by the ALJ~~ for good cause.

31 EMERGENCY ~~AND~~OR EXPEDITED ~~PROCEEDINGS~~ PROCEDURES

Whenever a hearing is required by law to be held pursuant to an expedited time frame inconsistent with these Rules, or whenever the ~~ALJ, either on motion of any party or on the ALJ's own motion,~~Administrative Law Judge determines that an expedited time frame is necessary to protect the interests of the parties or the ~~public~~public's health, safety, or welfare, the ~~ALJ~~Administrative Law Judge shall require ~~such filing of~~ pleadings and shall conduct the hearing in such manner as justice requires.

32 RECUSAL OF ~~ALJ~~ AN ADMINISTRATIVE LAW JUDGE

(1) ~~Any person serving as an ALJ is subject to disqualification in the specific case before the ALJ for~~ An Administrative Law Judge may be recused, or disqualified from a case, based on bias, prejudice, interest, or any other cause provided for in this Rule.

(2) An ~~ALJ~~Administrative Law Judge shall be ~~disqualified~~ recused in any proceeding in which the ~~ALJ's~~ impartiality of the Administrative Law Judge might reasonably be questioned, including but not limited to~~:~~

~~(a)~~ instances ~~where the ALJ~~in which:

(a) The Administrative Law Judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) ~~the ALJ~~The Administrative Law Judge served as a lawyer in the matter in controversy, or a lawyer with whom the ~~ALJ~~Administrative Law Judge previously practiced law served during such association as a lawyer concerning the matter, or the ~~ALJ~~Administrative Law Judge has been a material witness concerning the matter; ~~and~~ or

(c) ~~the ALJ or ALJ's~~ The Administrative Law Judge, the spouse of the Administrative Law

Judge, a person within the third degree of relationship to either of them, the spouse of such a person, or any other member of the ~~ALJ's~~ family of the Administrative Law Judge residing in the ~~ALJ's~~ household is a party to the proceeding or an officer, director, or trustee of a party, is acting as a lawyer or as a party's representative in the proceeding, is known by the ~~ALJ~~Administrative Law Judge to have more than trivial interest that could be substantially affected by the proceeding, or is to the ~~ALJ's knowledge~~knowledge of the Administrative Law Judge likely to be a material witness in the proceeding.

(3) An ~~ALJ~~Administrative Law Judge shall keep informed about ~~the ALJ's~~his or her personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal financial interests of the ~~ALJ's~~ spouse and minor children residing in the ~~ALJ's~~ household of the Administrative Law Judge.

(4) ~~An ALJ disqualified~~An Administrative Law Judge who is recused by the terms of this Rule may disclose on the record the basis of disqualification and may ask the parties and their lawyers to consider, out of ~~the~~his or her presence ~~of the ALJ~~, whether to waive disqualification. If~~,~~ following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties ~~and lawyers, without participation by the ALJ, all~~ agree that the ~~ALJ~~Administrative Law Judge should not be disqualified, ~~and the ALJ is then willing to~~the Administrative Law Judge may preside~~, the ALJ may preside in~~ over the proceeding. The agreement shall be incorporated into the hearing record ~~of the proceeding~~.

(5) Any party ~~may~~ shall move for the disqualification of an ~~ALJ~~Administrative Law Judge promptly after receipt of notice indicating that the ~~ALJ~~Administrative Law Judge will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(6) All ~~petitions for the disqualification of an ALJ~~motions for recusal shall be made in writing and shall be accompanied by an affidavit setting forth definite and specific allegations ~~which~~that demonstrate the facts upon which the ~~petition~~motion for disqualification is based. ~~Any petition for disqualification~~A motion for recusal shall be referred to another ~~ALJ~~Administrative Law Judge if the ~~ALJ~~Administrative Law Judge originally assigned to the matter determines that the affidavit is legally sufficient and that, assuming all the allegations of the affidavit are true, ~~disqualification~~recusal would be warranted. If the ~~petition~~motion for ~~disqualification~~recusal is referred to another ~~ALJ and that ALJ determines the petition~~ Administrative Law Judge and the motion is determined to be meritorious, the ~~ALJ~~Administrative Law Judge originally assigned to the matter shall be disqualified.

33 TRANSFER OF THE RECORD TO ~~THE~~ REFERRING AGENCY

Following the entry of an Initial or Final Decision, the Clerk shall compile and certify the ~~record of the hearing, including the Initial Decision and any tapes or other recordings of the~~ hearing ~~which have not been transcribed,~~ record to the Referring Agency. ~~Unless the record has been certified to a reviewing court pursuant to Rule Rule 39, sixty days following the entry of a Final Decision the Clerk shall compile and certify the record of the hearing, including the Final Decision and any tapes or other recordings of the hearing which have not been transcribed, to the Referring Agency.~~

34 APPEARANCE BY ATTORNEYS; SIGNING OF PLEADINGS

~~(1) Except as authorized in paragraph (2) of this Rule or where specifically authorized by an applicable federal or Georgia statute or rule, no person shall represent any party in a proceeding before an ALJ unless the person is an active member in good standing of the State Bar of Georgia and has filed an entry of appearance in the case in the attorney's individual name. An entry of appearance shall not be required if a pleading, motion or other paper has previously been filed on the case by the attorney of record pursuant to paragraph (3) of this Rule.~~

~~(2) Nonresident attorneys who are not active members of the State Bar of Georgia may be permitted to appear before an ALJ in isolated cases upon motion to and in the discretion of the ALJ. A motion to appear in a particular case shall state that the movant is an active member in good~~

~~standing of the bar of the jurisdiction in which the movant regularly practices and that the movant agrees to behave in accordance with the Georgia standards of professional conduct and the duties imposed upon attorneys by O.C.G.A. § 15-19-4.~~

~~(3) Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleadings and state the party's address. The signature of an attorney constitutes a certificate by the attorney that the attorney has read the pleading and that it is not interposed for any improper purpose, including, but not limited to, delay or harassment. If a pleading, motion, or other paper is signed in violation of this Rule, the ALJ, upon motion of any party or upon the ALJ's own motion, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, including, but not limited to, dismissal.~~

Repealed.

35 INVOLUNTARY DISMISSAL

After a party with the burden of proof has ~~completed the presentation of~~presented its evidence, ~~any other~~ a party~~, without waiving its right to offer evidence in the event the motion is not granted,~~ may move for dismissal on the ground that the party ~~which has~~ that presented its evidence has failed to carry its burden ~~so as to demonstrate its right to some or all of the determinations sought by that party~~. The ~~ALJ~~Administrative Law Judge may ~~then~~ determine the facts and render an Initial or Final Decision against the party ~~which~~ that has presented its evidence as to any or all issues ~~or~~. The moving party shall not waive its right to offer evidence in the event the motion is denied. The Administrative Law Judge may decline to render an Initial or Final Decision until after the close of all the evidence.

36 ALTERNATIVE DISPUTE RESOLUTION ~~PROGRAM~~

~~OSAH~~The Office of State Administrative Hearings has established an Alternative Dispute Resolution ~~("ADR") Program~~process to provide a speedy, efficient, and inexpensive resolution of disputes. The Uniform Rules for Dispute Resolution Programs adopted by the Georgia Supreme Court that are applicable to contested civil actions shall be followed. ~~Copies of the *Uniform Rules for Dispute Resolution Programs* are available at OSAH and on the Internet at http://www.ganet.orglgadr/appendxa.html.~~

37 REQUEST FOR AGENCY RECORDS

(1) In any matter which could result in the revocation, suspension, or limitation of a license or permit, requests by the licensee or permit holder for exculpatory, favorable, or arguably favorable information relative to any pending issues concerning the license or permit shall be governed by O.C.G.A. § 50-13-18(d).

(2) Requests for access to public records pertaining to the subject of a pending matter shall be governed by O.C.G.A. § 50-18-70(e).

38 DISCOVERY

~~Discovery shall not be available in any proceeding before an ALJ except to the extent specifically authorized by a statute or rule. Nothing in this Rule is intended to limit the provisions of Article 4 of Chapter 18 of Title 50 or Rule 37.~~

Repealed.

39 ~~PETITIONS FOR~~ JUDICIAL REVIEW

~~A~~ Pursuant to the APA, a copy of any petition for judicial review of a Final Decision shall be filed with the ~~Clerk~~ Office of State Administrative Hearings by the party seeking judicial review simultaneously with the service of the petition upon the Referring Agency ~~pursuant to the APA. Upon receipt of such a petition, the Clerk shall compile and certify the record of the hearing to the reviewing court on behalf of the Referring Agency~~. The Referring Agency shall submit the hearing record as compiled and certified by the Clerk to the reviewing court.

40 ~~PETITIONS FOR~~ CIVIL PENALTIES ~~IN~~REQUESTED BY THE DEPARTMENT OF NATURAL RESOURCES~~' MATTERS~~

(1) Whenever an official within the Department of Natural Resources (~~hereinafter the~~ "DNR Official") ~~determines to seek~~seeks the imposition of civil penalties, the DNR Official shall file a petition for hearing with the Clerk.

(2) A petition for hearing on civil penalties shall contain:

(a) A statement of the legal authority and jurisdiction under which a hearing is requested;

(b) A statement ~~of~~indicating each specific section ~~(including~~, subsection ~~and~~ , or paragraph, if applicable~~)~~, of the laws or ~~rules alleged to have been~~regulations allegedly violated;

(c) A short and plain statement of the facts asserted as the basis of the alleged violation(s); and

(d) The amount of civil penalty ~~which is proposed~~ sought to be imposed.

(3) Upon ~~the~~ filing ~~of such a~~ the petition, the Clerk shall ~~forthwith~~ issue a summons ~~for~~ directed to each person or entity from whom civil penalties are sought ~~(hereinafter the "respondent")~~ and deliver the summons to the DNR Official for service. ~~Such a~~The summons shall be signed by the Clerk, ~~be directed to the respondent,~~ and contain the name of the forum ~~to which the respondent is summoned~~, the name and address of counsel for the DNR Official, and a statement of the requirements of subparagraph (4) below. Each summons~~, with~~ shall have a copy of the petition for hearing attached, and shall be served by the DNR Official by certified mail or personal service ~~upon the respondent~~. A return of service for each summons and petition shall be filed with the Clerk promptly after service.

~~(4) Within 30 days of service of the summons and petition, the respondent shall file with the Clerk and serve upon the DNR Official a response to all allegations set forth in the petition.~~ A response to the petition shall be filed with the Clerk and served upon the DNR official within thirty (30) days of service of the summons and petition. The response shall address all factual allegations set forth in the petition and shall include any affirmative defenses ~~to be presented by the respondent~~. Any allegations of fact contained in the petition for hearing shall be deemed admitted unless they are specifically denied, or unless ~~the respondent lacks~~ it is stated that there is a lack of knowledge or information sufficient to form a belief as to the truth ~~thereof and so states, in the response~~of the allegations.

41 CONTINUANCES ~~AND~~; CONFLICTS

(1) ~~All motions for continuances~~ (a) A motion for continuance shall only be granted upon a showing of good cause, and shall not be granted simply because the parties ~~and/~~or their counsel agree ~~thereto. Among other factors the ALJ~~. The Administrative Law Judge may consider ~~in connection with a motion for continuance are the~~ among other pertinent factors the impact of ~~the~~ a continuance ~~up~~on any parties who do not consent to the motion, the ~~ALJ's~~ calendar of Administrative Law Judge, the difficulty in rescheduling the hearing site, the need for an expeditious resolution of the matter(s) at issue, and the ~~public~~public's health, safety, and welfare.

(b) A notice of conflict filed ~~pursuant to paragraph (2) below~~ shall not be considered as a motion for a continuance unless the notice expressly requests a continuance.

(2) In the event an attorney has a conflict involving an appearance ~~in an OSAH proceeding~~before the Office of State Administrative Hearings and another legal proceeding, the requirements of the Uniform Rules for the Superior Courts shall be followed.

42 ATTORNEY WITHDRAWALS ~~AND~~; LEAVES OF ABSENCE

~~The withdrawal and leave of absence provisions of the Uniform Rules for the Superior Courts shall be followed.~~Attorneys of record shall follow the Uniform Rules for the Superior Courts for withdrawals and leaves of absence.

43 ~~ELECTRONIC AND PHOTOGRAPHIC~~ NEWS COVERAGE OF ADMINISTRATIVE PROCEEDINGS

In all administrative hearings open to the public, persons desiring to broadcast~~/~~, record~~/~~, or photograph any portion of ~~an OSAH~~ a proceeding must file a timely written request with the ~~ALJ involved~~Administrative Law Judge prior to the hearing. The request shall specify the particular proceedings for which such coverage is requested, the type of equipment to be used in the courtroom, and the person responsible for installation and operation of such equipment. The ~~ALJ~~Administrative Law Judge shall resolve such request in the manner prescribed for such a request by the Uniform Rules for the Superior Courts.